

Income Tax Appellate Tribunal - Indore

Shri Ramesh Chand Rai, Indore vs The Cit(A)-3, Bhopal, Bhopal on 18 April, 2022

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI MAHAVIR PRASAD, JUDICIALMEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING
IT(SS)A No.118 to 124/Ind/2020
Assessment Year: 2010-11 to 2016-17
Shri Ramesh Chandra Rai, / ACIT (Central)-1,
Ratlam Bhopal
Vs.
(Appellant) (Respondent)

P.A. No.ADOPR9447D ITA No.35 to 38/Ind/2021 Assessment Year: 2012-13 to 2014-15 & 2016-17
Shri Ramesh Chandra Rai, / ACIT (Central)-1, Ratlam Bhopal Vs.

(Appellant) (Respondent)

P.A. No.ADOPR9447D

IT(SS)A No.49 to 55/Ind/2021
Assessment Years: 2010-11 to 2016-17
JCIT-central-1, / Shri Ramesh Chandra Rai,
Ratlam
Bhopal

Shri Ramesh Chandra Rai, Ratlam
AY 2010-11 to AY 2016-17

(Appellant) Vs. (Respondent)

P.A. No.ADOPR9447D

Appellant by S/Shri Anil Kamal Garg & Arpit Gaur, CAs

Respondent by Shri P.K. Mitra, CIT-DR

Date of Hearing: 18.01.2022

Date of Pronouncement: 18.04.2022

/ O R D E R

PER BENCH

The above captioned appeals filed at the instance of the Revenue and cross appeals filed by the Assessee for Assessment Year 2010-11 to 2016-17 are directed against the Common Order of the Ld. Commissioner of Income Tax (Appeals)-3, Bhopal (in short 'CIT(A)'), dated 06.07.2020, which is arising out of the Common Assessment Order u/s. 153A r.w.s. 143(3) of the Income-Tax Act, 1961 (in short, 'the Act') dated 10.08.2018 passed by the ACIT (Central) -I, Bhopal.

2.1 Grounds of appeal raised by the Revenue for AY 2010-11 in IT(SS)A No.49/Ind/2021:

- "1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.69,98,079/- made by the AO on account of undisclosed income from liquor trading business.
2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.46,37,632/- made by the AO on account of undisclosed interest income.
3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.47,40,000/- made by the AO on account of unexplained investment"

2.2 Grounds of appeal raised by the Revenue for AY 2011-12 in IT(SS)A No.50/Ind/2021:

- Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.2,31,19,457/- made by the AO on account of undisclosed income from liquor trading business.
2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.30,22,593/- made by the AO on account of undisclosed interest income.
 3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.42,99,000/- made by the AO on account of undisclosed investment.
 4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,10,11,000/- made by the AO on account of unexplained investment.
 5. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.2,35,00,000/- made by the AO on account of unexplained investment."

2.3 Grounds of appeal raised by the Revenue for AY 2012-13 in IT(SS)A No. 51/Ind/2021:

"1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 6,26,53,801/- made by the AO on account of undisclosed income from liquor trading business.

2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,24,139/- made by the AO on account of undisclosed interest income.

3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 30,07,050/- made by the AO on account of undisclosed investment.

4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,12,03,000/- made by the AO on account of unexplained investment."

2.4 Grounds of appeal raised by the Revenue for AY 2013-14 in IT(SS)A No. 52/Ind/2021:

"1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 5,89,58,701/- made by the AO on account of undisclosed income from liquor trading business.

2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 61,803/- made by the AO on account of undisclosed interest income.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 4,07,01,630/- made by the AO on account of undisclosed investment.

4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 31,500/- made by the AO on account of unexplained investment.

5. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 7,18,42,185/- made by the AO on account of unexplained investment.

6. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 10,00,000/- made by the AO on account of unexplained investment.

7. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 8,00,000/- made by the AO on account of undisclosed cash payments."

2.5 Grounds of appeal raised by the Revenue for AY 2014-15 in IT(SS)A No. 53/Ind/2021:

"1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 17,64,700/- made by the AO on account of unexplained income.

2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 2,49,47,481/- made by the AO on account of undisclosed investment.

3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 2,05,82,582/- made by the AO on account of unexplained investment.

4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 13,53,960/- made by the AO on account of undisclosed cash payments."

2.6 Grounds of appeal raised by the Revenue for AY 2015-16 in IT(SS)A No.54/Ind/2021:

"1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 7,75,08,425/- made by the AO on account of undisclosed income from liquor trading business.

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2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 66,28,263/- made by the AO on account of unexplained income.

3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,70,76,800/- made by the AO on account of undisclosed investment.

4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 51,00,000/- made by the AO on account of undisclosed expenditure.

5. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 2,14,72,474/- made by the AO on account of undisclosed

investment.

6. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 3,27,53,066/- made by the AO on account of unexplained investment."

2.7 Grounds of appeal raised by the Revenue for AY 2016-17 in IT(SS)A No. 55/Ind/2021:

"1. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 14,46,530/-made by the AO on account of unexplained cash found.

2. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,32,43,450/- made by the AO on account of undisclosed income from liquor trading business.

3. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 17,28,790/- made by the AO on account of unexplained income.

4. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 2,34,00,000/- made by the AO on account of unexplained investment.

5. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 44,00,000/- made by the AO on account of unexplained income.

6. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 11,00,000/- made by the AO on account of unexplained investment.

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7. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 75,19,000/- made by the AO on account of unexplained investment.

8. On the fact and in the Circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 9,23,800/- made by the AO on account of undisclosed cash payments."

2.8 Grounds of appeal raised by the Assessee for AY 2010-11 in IT(SS)A No.118/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the Id. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

2c) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for making proposal of Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 referring the case of the appellant to Special Audit under s.142(2A) of the Act without considering and appreciating the material fact that the same sets of books of account of the appellant had also undergone scrutiny assessment under s.143(3) of the Act for the relevant assessment year and the then AO had passed the assessment order in the case of the appellant after verification of such books of account only.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the action of the learned CIT(A) in confirming the additions to the extent of Rs.6,61,000/- made by the AO in the appellant's income which is quite unjustified, unwarranted, excessive, arbitrary and bad-in-law.

5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under s.132(1) of the Act.

7 That, the learned CIT(A) grossly erred, both on facts and in law, in making a finding that the appellant had formed some syndicate named and titled as 'M/s. Mahakal Traders, Dhar'.

8a) That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.4,25,000/- made by the AO in the appellant's income on account of alleged undisclosed warehouse profit from some Syndicate named as 'M/s. Mahakal Traders' merely on the basis of some loose papers, without considering and appreciating the explanation of the appellant.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 8b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the impugned addition of Rs.4,25,000/- made by the AO in the appellant's income without considering and appreciating the material fact that the appellant was not operating any warehouse either in his individual capacity or in association with any other person or Syndicate.

9a) That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.2,36,000/- made by the AO in the appellant's income on account of alleged unexplained payment of commission to achieve turnover in some 'M/s. Calcutta Developers Pvt. Ltd.' without considering

and appreciating the material fact that the appellant was neither any functionary of such company nor he was interested as a shareholder in the said company.

9b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the impugned addition of Rs.2,36,000/- made by the AO in the appellant's income merely on the basis of some letter without conducting necessary enquiry and without bringing any corroborative cogent material on record to establish her allegation.

9c) That, without prejudice to the above and without in any manner admitting that the appellant had actually made the receipts of any income, amounting to Rs.4,25,000/- from any warehouse and as also without admitting that the appellant had actually made payment of any commission amounting to Rs.2,36,000/-, if both the receipt and payment transactions are held to be genuine, then, the learned CIT(A) grossly erred in not giving the benefit of telescoping to the appellant in respect of the alleged payment against the alleged receipts.

10. That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.9 Grounds of appeal raised by the Assessee for AY 2011-12 in IT(SS)A No.119/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

2c) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for making proposal of referring the case of the appellant to Special Audit under s.142(2A) of the Act without considering and appreciating the material fact that the same sets of books of account of the appellant had also undergone scrutiny assessment under s.143(3) of the Act for the relevant assessment year and the then AO has passed the assessment order in the case of the appellant after verification of such books of account only.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

5a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 without forming any Syndicate or Group with others for carrying out such liquor business.

5b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under s.132(1) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses incurred by so-called Syndicates without considering and appreciating the appellant's submission to

the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

7 That, the learned CIT(A) grossly erred, both on facts and in law, in making a finding that the appellant had formed some syndicate named and titled as 'M/s. Mahakal Traders, Dhar'.

8 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.10 Grounds of appeal raised by the Assessee for AY 2012-13 in IT(SS)A No. 120/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the Id. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of

account and documents of some other so-called Syndicates only were referred to before making such proposal.

2c) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for making proposal of referring the case of the appellant to Special Audit under s.142(2A) of the Act without considering and appreciating the material fact that the same sets of books of account of the appellant had also undergone scrutiny assessment under s.143(3) of the Act for the relevant assessment year and the then AO has passed the assessment order in the case of the appellant after verification of such books of account only.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in making an enhancement of Rs.35,10,000/- in the appellant's income by invoking the provisions of section 251(2) of the Act on the allegation of unexplained investment of the appellant in some land at Lalitpur.

5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under s.132(1) of the Act.

7a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses incurred by so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

7b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

8 That, the learned CIT(A) grossly erred, both on facts and in law, in making a finding that the appellant had formed some syndicate named and titled as 'M/s. Mahakal Traders, Dhar'.

9a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in making an enhancement of Rs.35,10,000/- in the income of the appellant by invoking the provisions of s.251(2) of the Act on account of alleged unexplained investment in purchase of land at village Lalitpur.

9b) That, without prejudice to the above and without admitting any alleged unexplained investment in the subject land and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged receipt of income by the appellant from various Syndicates in various years.

10 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.11 Grounds of appeal raised by the Assessee for AY 2013-14 in IT(SS)A No. 121/Ind/2020:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "1a) That, on the facts and in the circumstances of the case, the Id. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in confirming the additions to the extent of Rs.90,000/- made by the AO in the appellant's income and as also, in making an enhancement of Rs.77,28,310/- in the appellant's income under s.251(2) of the Act thereby resulting into an addition of Rs.78,18,310/- in the appellant's returned income.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under s.132(1) of the Act.

7a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses incurred by so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

7b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

8 That, the learned CIT(A) grossly erred, both on facts and in law, in making a finding that the appellant had formed some syndicate named and titled as 'M/s. Mahakal Traders, Dhar'.

9 That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition to the extent of Rs.90,000/- out of the total addition of Rs.8,90,000/- made by the AO in the appellant's income on account of unaccounted cash payments allegedly made by the appellant without considering and appreciating the explanation of the appellant to the effect that the cash payment of Rs.90,000/- was not made by the appellant but it was made by one company named and styled as 'M/s. Regent Beer and Wines Ltd.' in which the appellant was one of the directors.

10a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in making an enhancement of Rs.77,28,310/- in the income Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of the appellant by invoking the provisions of s.251(2) of the Act on account of alleged unexplained investment in purchase of land at village Lalitpur.

10b) That, without prejudice to the above and without admitting any alleged unexplained investment in the subject land and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged receipt of income by the appellant from various Syndicates in various years.

11 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.12 Grounds of appeal raised by the Assessee for AY 2014-15 in IT(SS)A No. 122/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the

Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the nature and complexity of the accounts or volume of accounts or doubts about the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in confirming the additions to the extent of Rs.1,19,000/- made by the AO in the appellant's income and as also, in making an enhancement of Rs.4,00,000/- in the appellant's income under s.251(2) of the Act thereby resulting into an addition of Rs.5,19,000/- in the appellant's returned income.

5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses incurred by so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

7 That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.1,19,000/- made by the AO in the appellant's income on account of alleged undisclosed rental income from Bolero Vehicle, merely on the basis of a diary written by the ex-accountant (deceased) of the appellant, firstly without considering the material fact that the appellant had not derived any rental income from such vehicle and secondly, without bringing on record any other cogent adverse material by making necessary enquiries.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 8a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in making an enhancement of Rs.4,00,000/- in the income of the appellant by invoking the provisions of s.251(2) of the Act on account of alleged unexplained investment in purchase of land at village Lalitpur.

8b) That, without prejudice to the above and without admitting any alleged unexplained investment in the subject land and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged rental income from plying of Bolero Vehicle and as also, alleged receipt of income by the appellant from various Syndicates in various years.

9 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.13 Grounds of appeal raised by the Assessee for AY 2015-16 in IT(SS)A No.123/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the Id. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been

presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the action of the learned CIT(A) in confirming the additions to the extent of Rs.1,58,96,898/- made by the AO in the appellant's income which is quite unjustified, unwarranted, excessive, arbitrary and bad-in-law.

5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under

s.132(1) of the Act.

7a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses incurred by so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 7b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

8a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.74,80,454/- made by the AO in the appellant's income on account of alleged undisclosed capital investment of the appellant in so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business and therefore, neither he was required nor he actually made any capital investment in any syndicate.

8b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the impugned addition of Rs.74,80,454/-, merely on some incomplete and fictitious accounts, documents and datas, the veracity whereof by themselves were not getting established.

8c) That, without prejudice to the above and without in any manner admitting the existence of any Syndicate and making of any investment by the appellant in such Syndicates, even if for the sake of presumption, it is assumed that the appellant had formed some association of persons, in the form of Syndicates, for carrying out the business of liquor and also made some investments in such Syndicates, then also working of the amount of alleged undisclosed investment so determined by the AO at Rs.74,80,454/- and confirmed by the learned CIT(A) is not correct but excessive.

8d) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the impugned addition of Rs.74,80,454/- as the appellant's undisclosed investment in liquor business without considering and appreciating the investment, by way of own capital as well as borrowed funds, already recorded in the regular books of account maintained by the appellant and duly shown in the audited financial statements furnished along with the return of income.

9a) That, the learned CIT(A) grossly erred, both on facts and in law, in partially sustaining the addition to the extent of Rs.76,32,770/- out of the total addition of Rs.1,27,32,770/- made by the AO in the appellant's income on account of alleged unexplained expenditure by the appellant in the marriage of his son.

9b) That, without prejudice to the above and without admitting any alleged unexplained marriage expenditure and as also, without admitting any receipt of income by the appellant from any

Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained expenditure against the alleged receipt of income by the appellant from various Syndicates.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 10a) That, the learned CIT(A) grossly erred, both on facts and in law, in partially confirming an addition to the extent of Rs.7,83,674/- out of the total addition of Rs.2,22,56,148/- in the appellant's income on account of alleged undisclosed expenditure in purchase of jewellery without properly considering and appreciating the explanation made by the appellant to the effect that the alleged investment in the jewellery was never made by the appellant.

10b) That, without prejudice to the above and without admitting any alleged unexplained expenditure in subject jewellery and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained expenditure against the alleged receipt of income by the appellant from various Syndicates in various years.

11 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

2.14 Grounds of appeal raised by the Assessee for AY 2016-17 in IT(SS)A No. 124/Ind/2020:

"1a) That, on the facts and in the circumstances of the case, the ld. CIT(A) grossly erred in confirming the action of the AO in passing the impugned Assessment Order without considering the material fact that the impugned Assessment Order is barred by the time limit prescribed under s.153B(1)(a) of the Income-Tax Act, 1961 inasmuch in the instant case, last of the authorisations for search under s.132 of the Act was executed during the financial year ended on 31-03-2016 and consequently, the Assessment Order was statutorily required to be passed uptill 31-12-2017 whereas such Assessment Order has actually been passed after 31-12-2017, therefore, the impugned Assessment Order, being a nullity, deserves to be quashed on this legal ground alone.

1b) That, without prejudice to the above, the learned CIT(A) grossly erred in not considering the material fact that in the instant case, clause (ii) of Explanation to section 153B would be having no application for the reason that the direction issued by the AO to the appellant to get his books of account audited under s.142(2A) of the Act by itself was illegal and void ab initio and consequently, based upon such direction, any extension of time limit for framing the assessment could not have been presumed.

2a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for directing the appellant to get his books of account audited by special auditors under s.142(2A) of the Act without

giving any single opportunity of being heard to the appellant as contemplated under the proviso to sub-section (2A) of section 142 of the Act.

2b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the action of the AO for giving direction of Special Audit under s.142(2A) of the Act without bringing on record any specific observation and without confronting the same to the appellant as regard to the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 nature and complexity of the accounts or volume of accounts or doubts about the correctness of accounts or multiplicity of transactions or specialized nature of business activity of the appellant which could warrant the necessity of special audit under s.142(2A) of the Act, in a circumstance when the books of account of the appellant were not referred but books of account and documents of some other so-called Syndicates only were referred to before making such proposal.

3 That, without prejudice to the above, the learned CIT(A) grossly erred in confirming the action of the AO for framing the assessment, on the basis of the Report submitted by the Special Auditors under s.142(2A) of the Act, without first giving any opportunity of being heard to the appellant on the report and datas contained in such report, as required under the provisions of sub-section (3) of section 142 of the Act.

4 That, without prejudice to the above, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in confirming the additions to the extent of Rs.1,07,00,813/- made by the AO in the appellant's income and as also, in making an enhancement of Rs.2,00,000/- in the appellant's income under s.251(2) of the Act thereby resulting into an addition of Rs.1,09,00,813/- in the appellant's returned income.

5 That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the action of the AO for making trading additions in the business income of the appellant without first rejecting the regular books of account maintained by the appellant, by invoking the provisions of s.145(3) of the Act.

6a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation upon the appellant for deriving share of profit from various so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

6b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not appreciating the appellant's contention made before him that corresponding to the undisclosed income determined by the AO for various assessment years, no undisclosed assets or investments or expenditure were detected during the course of search and seizure operations under s.132(1) of the Act.

7a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in upholding the AO's action of making allegation of appellant's share in the inadmissible expenses

incurred by so-called Syndicates without considering and appreciating the appellant's submission to the effect that the appellant was carrying out the liquor business, in his individual capacity only, without forming any Syndicate or Group with others for carrying out such liquor business.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 7b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the findings of the AO that the alleged syndicates had incurred inadmissible expenses.

8a) That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.31,00,813/- made by the AO in the appellant's income on account of alleged undisclosed investment in capital of some Ujjain Syndicate merely on the basis of some loose papers and that too, without properly considering and appreciating the explanation of the appellant.

8b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.31,00,813/- made by the AO in the appellant's income without considering and appreciating the material fact that the appellant neither carried out any financial transaction with the so-called Ujjain Syndicate nor he made any investment therein.

8c) That, without prejudice to the above and without admitting any alleged unexplained investment in capital of Ujjain Syndicate and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged receipt of income by the appellant from various Syndicates in various years.

9 That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.5,00,000/- made by the AO in the appellant's income on account of alleged unexplained expenditure in the nature of illegal gratification without properly considering and appreciating the written submission made by the appellant.

10a) That, the learned CIT(A) grossly erred, both on facts and in law, in partially maintaining an addition to the extent of Rs.71,00,000/- out of the total addition of Rs.3,05,00,000/- made by the AO in the appellant's income on allegation of unexplained investment in purchase of shares of a company namely 'M/s. Agrawal Distilleries Pvt. Ltd.' (ADPL) merely on the basis of some loose paper impounded during the course of survey under s.133A in the premises of some other person.

10b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in partially maintaining an addition to the extent of Rs.71,00,000/- out of the total addition of Rs.3,05,00,000/- made by the AO in the appellant's income on allegation of unexplained investment in purchase of shares of ADPL without properly considering and appreciating the explanation of the appellant made along with necessary evidences and without having any corroborative cogent material on record to give any iota of evidence that the appellant made any unexplained investment in purchase of shares of ADPL.

10c) That, without prejudice to the above and without admitting any unexplained investment in purchase of shares of ADPL, the learned CIT(A) grossly Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 erred, both on facts and in law, in partially maintaining an addition to the extent of Rs.71,00,000/- out of the total addition of Rs.3,05,00,000/- made by the AO in the appellant's income on allegation of unexplained investment in purchase of shares of ADPL without considering and appreciating the material fact that no investment, whatsoever, in the subject shares was made by the appellant during the previous year relevant to the assessment year under consideration.

10d) That, without prejudice to the above and without admitting any alleged unexplained investment in purchase of shares in ADPL and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged receipt of income by the appellant from various Syndicates in various years.

11a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in making an enhancement of Rs.2,00,000/- in the income of the appellant by invoking the provisions of s.251(2) of the Act on account of alleged unexplained investment in purchase of land at village Lalitpur.

11b) That, without prejudice to the above and without admitting any alleged unexplained investment in the subject land and as also, without admitting any receipt of income by the appellant from any Syndicate, the learned CIT(A) grossly erred in not granting benefit of telescoping to the appellant in respect of the alleged unexplained investment against the alleged receipt of income by the appellant from various Syndicates in various years.

12 That, the appellant further craves leave to add, alter and/or amend any of the foregoing grounds of appeal as and when considered necessary."

3.1 Brief facts of the case as culled out from the records are that the assessee is an individual mainly deriving income from carrying out the business of sales of liquor. Besides, the assessee also derived income from his hotel business under a proprietary concern namely M/s. Hotel Ambrosia. Further, the assessee also derives income from certain partnership firms in which he is one of the partners. The assessee also derives salary and rental income. The assessee furnished his original returns of income for the various years u/s. 139 of the I.T. Act, 1961. Search and seizure operations u/s. 132 were carried out at various premises of Shivhare group and the assessee on 07/01/2016. Consequently, notices u/s. 153A were issued to the assessee for A.Y. 2010-11 to A.Y. 2015-16 on 27/10/2016. In response to the above notices, the assessee filed returns of income for A.Ys. 2010-11 to 2015-16 on various dates. The appellant filed regular return of income for A.Y. 2016-17 on 31/03/2017 declaring total income of Rs.98,89,480/-. The details of returns of income for A.Y. 2010-11 to 2015-16 are as under:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 A.Y. Date of filing
Returned Date of filing Income Additional of Return income (in of Return in declared

in Income u/s. 139 Rs.) response to Return u/s. offered, if the notice 153A (In Rs.) any (In Rs.) u/s. 153A 2010-11 15-10-2010 35,10,360 15-09-2017 39,62,380 4,52,020 2011-12 30-09-2011 44,22,230 15-09-2017 52,22,230 8,00,000 2012-13 30-09-2012 65,08,310 15-09-2017 65,08,300 (-)10 2013-14 30-09-2013 61,10,290 16-09-2017 61,08,490 (-)1,800 2014-15 30-11-2014 56,62,440 08-10-2017 56,62,440 Nil 2015-16 30-09-2015 83,58,820 10-10-2017 83,58,820 Nil 3.2 In the case of the assessee, a reference was made for special audit u/s.

142(2A) of the Act and accordingly, the special auditors submitted their report on 18.06.2018. The report of the special auditors, as produced by the assessee, was duly perused and considered by the AO and as also, by the CIT(A). A copy of the Special Auditors Report is also filed by the assessee before this Bench on 18/01/2022 which has been placed on record.

3.3 Finally, the AO made additions of Rs.69,98,079/- in A.Y. 2010-11, Rs.2,31,19,457/- in A.Y. 2011-12, Rs.6,26,53,801/- in A.Y. 2012-13, Rs.5,89,58,701/- in A.Y. 2013-14, Rs. 5,81,39,858/- in A.Y. 2014-15, Rs.8,48,67,951/- in A.Y. 2015-16 and Rs.1,32,43,450/- in A.Y. 2016-17 on account of share of assessee in undisclosed income of some syndicates, share in inadmissible expenses incurred by such syndicates and some undisclosed capital invested by the assessee in various syndicates (para 14). Undisclosed interest income on capital in Mahakal Traders, Dhar at Rs. 46,37,632/- in A.Y. 2010-11, Rs.30,22,593/- in A.Y. 2011-12, Rs.1,24,139/- in A.Y. 2012-13 and Rs.61,803/- in A.Y. 2013-14 (para 15); Undisclosed income in respect of Warehouse Profit from M/s. Mahakal Traders, Dhar at Rs.4,25,000/- in A.Y. 2010-11 (para 22); Unexplained payment of commission in M/s. Calcutta Developers Pvt. Ltd. at Rs.2,36,000/- in A.Y. 2010-11 (para 24); Undisclosed investment in loans and advances on the basis of jottings in diaries at Rs.47,40,000/- in A.Y. 2010-11, Rs.1,10,11,000/- in A.Y. 2011-12, Rs.1,12,03,000/- in A.Y. 2012-13, Rs.7,18,42,185/- in A.Y. 2013-14, Rs. 2,05,82,582/- in A.Y. 2014-15, Rs.3,27,53,066/- in A.Y. 2015-16 and Rs.75,19,000/- in A.Y. 2016-17 (para 26); Undisclosed investment in immovable properties on the basis of jottings in diaries at Rs.42,99,000/- in A.Y. 2011-12, Rs.30,07,050/- in A.Y. 2012-13, Rs.4,07,01,630/- in A.Y. 2013-14, Rs.2,49,47,481/- in A.Y. 2014-15, Rs.1,70,76,800/- in A.Y. 2015-16 and Rs.44,00,000/- in A.Y. 2016-17 (para 18); Undisclosed investment in Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 immovable properties at Rs.2,35,00,000/- in A.Y. 2011-12 and Rs.10,00,000/- in A.Y. 2013-14 (para 28); Undisclosed expenditure on purchase of jewellery at Rs.31,500/- in A.Y. 2013-14 and Rs.2,22,56,148/- in A.Y. 2015-16 (para 21); Undisclosed interest from M/s. Jai Baba Construction at Rs.17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 (para 16); Undisclosed rental income from Bolero at Rs.1,19,000/- in A.Y. 2014-15 (para 23); Unexplained expenditure on son's marriage at Rs.1,27,32,770/- In A.Y. 2015-16 (para 19); Unexplained cash found during the course of search at Rs.14,46,530/- in A.Y. 2016-17 (para 13); Rs. 3,05,00,000/- in A.Y. 2016-17 on account of undisclosed investment in purchase of shares (para 17); Unexplained expenditure in the nature of illegal gratification at Rs.5,00,000/- in A.Y. 2016-17 (para 20); Undisclosed income in respect of Jokhanbag Site at Rs.11,00,000/- in A.Y. 2016-17 (para 25); and Rs. 31,00,813/- in A.Y. 2016-17 on account of undisclosed investment in Ujjain Syndicate (para 27); Unaccounted cash payment on the basis of diaries at Rs.8,90,000/- in A.Y. 2013-14 and Rs.13,53,960/- in A.Y. 2014-15 (para 29); and unexplained cash found in the locker of family members at Rs.9,23,800/- in A.Y. 2016-17 (para 29).

4. Aggrieved assessee preferred separate appeals for all the assessment years under consideration before Id. CIT(A). The Id. CIT(A), vide his common Order dated 06.07.2020 adjudicated the appeals of the assessee thereby giving substantial relief and also confirming certain additions for the assessment years under consideration. While passing the Order, the Id. CIT(A) also made enhancement in the income of the assessee under s. 251 of the Act, amounting to Rs. 35,10,000/-, Rs. 77,28,310/-, Rs. 4,00,000/- and Rs. 2,00,000/- respectively for A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-17 on account of unexplained investment of the assessee in purchase of some land situated at Lalitpur.

5. Now, aggrieved by the relief granted by the Id. CIT(A) to the assessee, the revenue is in appeal before this Tribunal for the assessment years under consideration and against the additions confirmed and as also, enhancements made by the Id. CIT(A), the assessee has preferred cross appeals before us.

6. As all the appeals relate to the same assessee and the issues raised are common, they were heard together and are being disposed off by this common order for sake of convenience and brevity.

7. Ground No. 1 of the Revenue for A.Ys. 2010-11 to 2013-14 & 2015-16; Ground No. 2 of the Revenue for A.Y. 2016-17; Ground Nos. 6(a) & 6(b) of the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Assessee for A.Ys. 2010-11 & 2014-15; Ground Nos. 5(a), 5(b), 6(a) & 6(b) of the Assessee for A.Ys. 2011-12, Ground Nos. 6(a), 6(b), 7(a) & 7(b) of the Assessee for A.Ys. 2012-13, 2013-14, 2015-16 & 2016-17 7.1 Through the Ground No. 1 for A.Y. 2010-11 to A.Y. 2013-14 & A.Y. 2015-16 & Ground No. 2 for A.Y. 2016-17, the revenue has challenged the action of the Id. CIT(A) in deleting the additions made by the AO in the assessee's income in the various assessment years, on account of undisclosed income from liquor trade business through Syndicates. Further, through the grounds of appeal for various assessment years, the assessee has challenged the action of the Id. CIT(A) in confirming the finding of the AO that the assessee was carrying out the business through formation of Syndicates. The assessee also agitated that the Id. CIT(A) did not appreciate that corresponding to the undisclosed income determined by the AO, no undisclosed asset or investment or expenditure was detected during the course of search and seizure operations u/s. 132 of the Act.

7.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the premises of the assessee's group on 07.01.2016, various incriminating documents were seized from which it was revealed that to operate liquor trading business, the assessee had formed syndicates/cartels/group in different districts as self-organizing group formed to transact specific business, to pursue or promote a shared interest. As per the AO, from the seized documents it was evident that the assessee was one of the key members of multiple syndicates. The AO further taking support from dictionary clarified that such syndicates were formed by individuals or organizations to promote common interest of profit. According to the AO, the existence of syndicates was beyond doubts as the same was accepted by the various members of the group in their statements given during the search/post search investigation. Further, according to the AO, the term 'syndicate' was taken from the seized material in which they have used this term to explain their modus operandi. At sub para (v) of para 14.2 of the Order, the AO made a clear and unequivocal finding that various investigations strengthened the contention

that there existed a syndicate and various assessees are part of such syndicates. The AO also found that incriminating documents seized during the course of the search also contained some bank transactions which were carried out by the assessee from his bank accounts. The AO further made reference of various incriminating data which inter alia include, tally accounts, balance sheet, profit and loss account etc. of various syndicates in which the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 assessee was found to be one of the members. At para 14.4, the AO has given a finding that liquor syndicates, which are otherwise not legally permissible, have been maintained and operated. The AO further made a finding that the seized data reflect the correct income of the syndicates and as also share of profit of the assessee in such syndicates as mentioned in such data. The AO further found, from the seized data and documents, that the aforesaid syndicates had incurred certain expenditure for payment of illegal gratification to local police and government officers etc. which were not allowable under the Act. The AO while examining the tally data of the syndicates also found that such syndicates had incurred expenses on payment of rents without making any TDS u/s. 194-IA of the Act. Further, some seized documents reveal that these syndicates have made payments towards commission which were not allowable. Likewise, expenses on gifts, donation, personal expenses, breakage and leakages, etc. were not permissible. The AO also noted that some expenditure exceeding amount of Rs. 20,000/- were incurred by the syndicates in violation of the provisions of section of 40A(3)/(3A) of the Act. The AO also relied upon the findings of the special auditors given in their report. At the same time, the AO also found that the assessee had made investment in various syndicates the sources whereof were not satisfactorily explained by the assessee. After giving detailed findings, reproducing various seized data and drawing the syndicate wise details in tabular form, the AO made additions, for various assessment years under appeal, under three sub heads viz. (i) share of assessee in the undisclosed income from the syndicates; (ii) share of assessee in inadmissible expenditure incurred by the syndicates; and (iii) sum of undisclosed capital invested by the assessee in syndicates, by drawing various tables at para 14.10. Finally, after fairly giving set-off for the assessee's share in the losses incurred by the syndicates for various assessment years, the AO made the addition, for various assessment years, as per the table given at para 14.11 of the Order. The details of the assessment year wise additions made by the AO, as summarized by the Id. CIT(A) at para (4.5) of his Order, are as under:

A.Y.	Share of profit of the assessee in syndicates (A)	Share of loss of the assessee in syndicates (B)	Net Share of Profit of the assessee in syndicates (C=A-B)	Share of the assessee in inadmissible expenses incurred by the syndicates (D)	Undisclosed Capital Invested by the assessee in syndicates (E)	To (F) C+D
2010-11	6998079	-	6998079	-	-	69
2011-12	23088991	-	23088991	30466	-	231

Shri Ramesh Chandra Rai, Ratlam
AY 2010-11 to AY 2016-17

2012-13	40057872	882883	39174989	23478812	-	62653801
2013-14	32926263	10872575	22053688	36905013	-	58958701
2014-15	2379968	37972942	-	58139858	-	58139858
2015-16	29947221	120931	29826290	47561207	7480454	84867951
2016-17	1277618	456296	821322	12422128	-	13243450
Total	136676016	50305628	121963359	178537485	7480454	307981297

7.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences which were also furnished by him before the AO. Before the Id. CIT(A), the assessee also produced copy of Special Auditors' Report. The Ld. CIT(A), on the basis of the various datas seized from the premises of third person, dismissing the grounds raised by the assessee to the effect that he was carrying out his liquor business in his individual capacity and had not formed any syndicate, came to the conclusion that the assessee had certainly formed Syndicates with various persons. The Id. CIT(A) has given the relevant findings at para (4.5.3) and (4.5.4) of his order which are reproduced as under:

"4.5.3I have considered the facts of the case, the AO's findings, special auditor's report, appellant's submission, copies of the seized documents as produced before me, written and oral submissions made by the appellant before me from time to time and documents furnished by the appellant in the paper books. After considering all, I am of the firm view that the appellant had formed various syndicates/groups with other persons, in various years under appeal, for carrying out the business of liquor with a view to share the profit derived by such syndicates, in certain agreed ratio. The documentary evidences, in the form of tally data and financial statements were found either from the appellant's own premises or from the premises of the associates of the appellant and such seized data clearly reveal that the appellant along with others had formed AOPs in the shape of syndicates and such syndicates had carried out businesses as independent entities and from such entities the appellant had derived substantial amount of income by way of his share in profit. Further, the seized tally data and other incriminating documents that all such syndicates had incurred substantial expense towards payment of gratification, charity, donation, commission, personal expenses etc. which are not legally deductible under the provisions of section 37(1) of the Act. The appellant further could not establish by any documentary evidence that the syndicates had made due compliance of provisions of TDS before making payment of rent. Further, the possibilities of violation of provisions of section 40A(3)/(3A) which prohibits cash payments exceeding Rs. 20,000/- cannot be overruled and the appellant miserably failed to prove by any positive evidence that there was no such violation. From the seized documents, it was observed that the appellant had made investment in various syndicates, as his capital contribution, the sources whereof were not explained. The special auditors, in their report submitted u/s. 142(2A) of the Act and as also Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the AO has made a very detailed working for

arriving at the figures of the addition. However, share of the appellant in inadmissible expenditure incurred by various syndicates is of the same nature as his share in the income of the syndicates. In my view, share of profit of the appellant from each of the syndicates, for various years, was required to be computed after working out the taxable income of the syndicates as per the various provisions of the IT Act, 1961. Further, the undisclosed investment made by the appellant towards capital contribution in various syndicates cannot be regarded as income of the appellant from the syndicates business, but, the same has to be regarded as undisclosed investment of the appellant in such syndicates which is taxable u/s. 69/69B of the Act. Such undisclosed investment cannot be regarded as the business income of the appellant from syndicates.

4.5.4 I do not find any substance in the contention of the appellant that since he was carrying out the business of liquor in his individual capacity and was also showing income from carrying out such business in his returns of income, from year to year, no further income can be considered on the ground of share of his profit in the syndicates. From the records and seized material, it is evident that the appellant was carrying out liquor business by forming different syndicates and therefore, there cannot be two views that the appellant had derived income from such syndicates. The appellant has vehemently claimed that factually, he had not formed any syndicate. In support of his contention, the A.R. of the appellant was heavily harping upon the license policy of the State Government and according to the A.R. of the appellant, the syndicates were not granted any separate licenses for carrying out the business of liquor and without having the licenses, such syndicates could not have carried out any business. However, such an argument of the A.R. of the appellant has no legs to stand for the reason that merely because the appellant and other members of the syndicates have violated Excise Laws, it cannot be said that factually no syndicates were formed by them in a situation where the seized data and incriminating documents clearly reveal formation of such syndicates. Looking into totality of the facts, the appellant along with other persons had formed syndicates to carry out the business of liquor in which the appellant and other members were having certain share as agreed upon between themselves. Further, such syndicates had incurred certain expenses which were either prohibitory or inadmissible in the nature u/s. 37 of the Act or were not allowable for non compliance of the provisions of section 40(a)(ia) or section 40A(3)/(3A) of the Act. I also hold that the appellant had made undisclosed investment towards his capital contribution in the various syndicates and in various years."

However, after giving the aforesaid findings, the Id. CIT(A) held that although, the assessee had undisputedly formed various syndicates/groups with various persons for carrying out the business of liquor, for a definite share of profit, but, in any case, the share of the assessee in the profit of these syndicates and as also, in the inadmissible expenses incurred by such syndicates cannot be added to the income of the assessee in view of the specific provisions of section 86 of the Income-Tax Act, 1961 r.w.s. 67A of the Act. According to the Id. CIT(A), the status of these

syndicates is that of Association of Persons (AOP) or Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Body of Individuals (BOI) which are included in the definition of the expression 'Person' as ascribed to in section 2(31) of the Act. According to the Id. CIT(A), such syndicates are separate taxable legal entity and separately charged to tax u/s. 4 of the Act at the maximum marginal rate (MMR). The Id. CIT(A) further held that income derived by various syndicates, in which the assessee was one of the members, was required to be assessed in the hands of such syndicates only and the direct assessment in the hands of the assessee could not have been made in respect of such income derived by the syndicates. The Id. CIT(A) also held that even the question of admissibility or inadmissibility of any expenditure could have been raised only while making the assessment in cases of such syndicates. The Id. CIT(A) further held that the assessee could have, at the best, been assessed in respect of his share in taxable income of such syndicates but for the provisions of section 86 of the Act, which provides that Income Tax shall not be payable by the assessee in respect of his share in the income of the Association of Persons or Body of Individuals. Thus, relying upon the decisions of the Hon'ble Supreme Court in the case of ITO vs. CH. Atchiaiah (1996) 218 ITR 239 (SC), the Id. CIT(A) deleted the entire additions made by the AO in the assessee's income, for various assessment years, on the grounds of assessee's share in profit of various syndicates and as also, share in the inadmissible expenses incurred by such syndicates. The relevant findings have been given by the Id. CIT(A) at para (4.5.5) & (4.5.6) and again at para (4.7.1) to (4.7.6) of his Order. The same are being reproduced as under:

"4.5.5 Having given the findings as aforesaid, now, it has to be adjudicated here that whether the share of profit of the appellant in the syndicates' income, even if it remained undisclosed in the returns furnished by him, can legally be added to the income of the appellant and whether any tax, effectively, be levied on such income. As held in the earlier paras, the nature of share of appellant in the inadmissible expenses incurred by the syndicates is the same as that of share in profit from such syndicates, the tax treatment for both the additions in the hands of the appellant would remain the same. Thus, in my considered view, the appellant had derived undisclosed income in the form of share of profit from some syndicates, which are nothing but Association of Persons (AOP) or Body of Individuals (BOI) formed by the appellant along with various other persons for the purpose of carrying out the liquor business with a motive to earn profit from such business in an agreed ratio. In my view, under the provisions of section 2(31) of the Act which gives the definition of the expression 'Person', a person includes, an association of persons or a body of individuals, whether incorporated or not. The syndicates formed by the appellant along with others is a separate taxable legal entity and separately chargeable to tax u/s. 4 of the IT Act. Further, in my view, such syndicates (AOPs/BOIs) are chargeable to tax at the Maximum Marginal Rate (MMR). Thus, in the instant case, in my view, any assessment of income, on the basis of the seized incriminating material and data, ought to have been made in the hands of the respective syndicates, a separate taxable entity, either u/s.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 153C of the Act or under any other legal recourse available to the Department. However, in view of the specific provisions of section 86

of the IT Act, 1961 r.w.s. 67A, in computing the total income of the appellant, his share, as member of the AOP/BOI, was not liable to be included. The appellant has also taken separate grounds taking the aforesaid plea and therefore, a detailed separate adjudication has been made elsewhere in the present order, while adjudicating the relevant grounds. However, since, in the Ground Nos. 6(a), 6(b), 7(a) & 7(b), the appellant is agitating the additions on account of share of profit of the appellant in the various syndicates and share of appellant in inadmissible expenses of the syndicates, without having recourse to the provisions of section 86 and section 67A of the Act, these Grounds of Appeal of the appellant, for various assessment years, are held as academic in the nature only, requiring no specific adjudication and therefore, the same are Dismissed.

4.5.6 However, in respect of appellant's undisclosed investment in various syndicates, in assessment year 2015-16, for which the appellant has taken Ground Nos. 8(a) and 8(b), there is no substance in the appellant's contention. Before me, it has been argued that first of all there was no syndicate and even if there was any such syndicate, the investments were made out of the explained sources only. It has also been argued that the amount of unexplained investments determined by the AO is not correct and suffer from various errors. In respect of incorrect determination of amount of undisclosed investment in syndicates, the appellant has also taken separate grounds of appeal bearing ground nos. 8(c) & 8(d) for A.Y. 2015-16. I have already given the finding that the appellant had formed syndicates with various persons for carrying out the business of liquor. From the ample of seized material, it is also evident that the appellant had made investment towards capital contribution in such syndicates. The appellant, neither during the course of the assessment proceedings nor before me, could explain the sources of making investments in such syndicates. Hence, the ground nos. 8(a) & 8(b) for A.Y. 2015-16 raised by the appellant, so far as they relate to his denial of forming any syndicates and making of any undisclosed investment in such syndicates are concerned, have no merit. However, since for quantum of undisclosed investments, the appellant has raised separate grounds viz. ground nos. 8(c) & 8(d) for A.Y. 2015-16, the issue relating to quantum of addition on these grounds of undisclosed investment has been adjudicated separately while dealing with such grounds. In the result, the ground nos. 8(a) & 8(b) for A.Y. 2015-16 are Dismissed."

"4.7.1 I have considered the facts of the case, the assessment order and the written as well as oral submissions of the appellant. On perusal of the seized tally data and other documents, it is amply evident that the appellant had formed syndicates with various persons, in various years and such syndicates had carried out liquor business for deriving profits to be shared by the appellant and other members of the syndicates in certain agreed ratio. The Special Auditors nominated under section 142(2A) of the Act have also given the same finding in their report. Further, the AO, at various places in the Order, has given clear findings that (i) the appellant had formed syndicates with various persons for carrying out the liquor business; (ii) from carrying out such businesses, the appellant had derived share of profit; (iii) such syndicates had incurred certain expenditure which were not permissible under the provisions of the Income Tax Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Act, 1961; and (iv) the appellant had made investment by way of capital contribution in such syndicates the sources whereof were not explained. Even, while adjudicating the ground nos. 6(a), 6(b) for A.Y. 2010-11 to A.Y. 2016-17, Ground Nos. 7(a) & 7(b) for A.Y. 2011-12 to A.Y. 2016-17 and Ground Nos. 8(a) & 8(b) for A.Y. 2015-16, supra, it has been held that the

appellant had formed syndicates for carrying out the liquor business. Once such findings are given, it becomes apparent that under the scheme of the Income Tax Act, 1961, such syndicates would fall within the definition of 'Persons' as ascribed to under clause (31) of section 2 of the Act either as 'Association of Persons' or 'Body of Individuals'. Consequently, in respect of any income derived by such syndicates, such syndicates alone would be chargeable to tax under section 4 of the Act. The Syndicates would be chargeable to tax independent from the members forming such syndicates. Needless to say, the income of such syndicates either under the head 'Income from profits or gains from Business or Profession' or under any other head would be required to be computed in accordance with the provisions of the Act only. Consequently, income under the head 'Income from Profits or Gains from Business or Profession', would be required to be computed in the manner provided under Part-D of the Chapter-IV of the Act which, inter alia, provides for disallowance of certain expenditure on various grounds. Such assessments in the hands of the syndicates, are to be made in accordance with the provisions of section 167B of the Act. Section 167B contemplates two situations. Sub-section (1) of section 167B deals with those cases in which individual shares of the members of an Association of Persons or Body of Individuals in the whole or any part of the income of such AOP/BOI are indeterminate or unknown. In such a situation, it has been provided that the tax shall be charged on the total income of the AOP or BOI at the maximum marginal rate and if any member of the AOP or BOI is chargeable to tax at a rate higher than maximum marginal rate, then, tax on the AOP or BOI shall be charged at such higher rate. Sub-section (2) of section 167B deals with other cases, viz. those cases which do not fall under sub-section (1) of section 167B of the Act. Accordingly, it envisages those cases in which the shares of the members of AOP or BOI are determinate and known. In such cases, if income of any of the members of the AOP or BOI exceeds the maximum amount which is not chargeable to tax, in the case of that member, such AOP or BOI would be chargeable to tax at the maximum marginal rate and where income of any member or members is chargeable at a rate or rates higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the AOP or BOI which is relatable to the income of such member or members and for the balance income, the tax shall be charged at the maximum marginal rate. In other words, irrespective of the status of the AOP/ BOI, it is required to pay tax atleast at maximum marginal rate on its income.

4.7.2 I find a significant force in the contention of the appellant that if there existed any syndicates, then income earned by such syndicates from carrying out businesses would be required to be assessed in the hands of such syndicates and such income cannot directly be assessed to tax in the hands of its members forming the syndicates. The investigation wing during the course of search found that the appellant is doing liquor business along with other persons by forming syndicates. The investigation wing has emphasized the formation of syndicates (group) to carryout the liquor business. The emphasis is on that there exists an entity syndicate which is carrying out the business. Statements of key persons of Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the syndicates were also recorded wherein, they has accepted the existence of syndicates.

The AO during the course of asssement proceedings has referred the matter to special auditor u/s 142(2A) of the Act for special audit in the case of appellant. The Auditor has also emphasized the formation of the syndicate and has given a finding that the syndicate is carrying out the business independently. The syndicates are functioning from separate offices and are preparing accounts

separately.

Further, the AO while passing the impugned assessment order from page no 20 to 52 of the assessment order has elaborately dealt that there exists a syndicate. The AO has also dealt with ingredients of the syndicates. Also, the AO has accepted the statements of key persons of the syndicates wherein they had accepted existence of the syndicate.

Nevertheless, the appellant during appellet proceedings has brought to my knowledge that the AO's of the syndicates has made addition of the undisclosed income in the hands of syndicate for respective assessment years. In support appellant has filed copies of assessment orders passed in the case of syndicates (AOP). The brief details of assessment orders passed by ACIT 2(1), Indore are as under:-

S.No	Name of AOP	Order under section	AYs	Income assessed
1	Shri Ramesh Chand Rai and manish Rai & Others, AOP (mandi Bamora)	144/153C r.w.s 153A of the Act	2010-11 to 2016-17	AYs 2010-11 to 14, 2015-16 & 2017 (Rs. Nil.) AY 2014-15 (Rs. 46,49,448/-)
2	Shri Ramesh Chand Rai and manish Rai & Others, AOP (Rau group)	144/153C r.w.s 153A of the Act	2010-11 to 2016-17	AYs 2010-11 to 14 & 2016-17 (Rs. Nil.) AY 2014-15 44,79,831/- AY 2015-16 1,17,71,839/-
3	Shri Ramesh Chand Rai and manish Rai & Others, AOP (Mahakal Traders Dhar Group)	144/153C r.w.s 153A of the Act	2010-11 to 2016-17	AYs 2010-11 to 15 & 2016-17 (Rs. Nil.) AY 2015-16 9,30,92,022/-
4	Shri Ramesh Chand Rai and manish Rai & Others, AOP (Gulabganj group)	144/153C r.w.s 153A of the Act	2010-11 to 2016-17	AYs 2010-11, 2012, 2013-14 to 2017 (Rs. Nil.)

Shri Ramesh Chandra Rai, Ratlam
AY 2010-11 to AY 2016-17

AY 2012-13 (Rs.

32,78,188/-

5 Shri Ramesh Chand Rai and 144/153C r.w.s 2010-11 to AYs 2010-11 to 2014
manish Rai & Others, AOP 153A of the Act 2016-17 15 & 2016-17 (Rs.
(Dhar Group) Nil.)

AY 2015-16 (Rs
2,03,89,740/-

On perusal of these assessment orders, it is found that the concerned AO i.e. ACIT 2(1), Indore in the cases of AOP's has made additions on account of undisclosed business income from carrying out the liquor business have been assessed on the basis of various materials which were seized during the course of the search carried out in the case of Shivhare Group. Further, in these assessment orders, it has been held that these AOPs being the liquor syndicates, had carried out business of liquor in various years and as per the Special Auditors Report given under s.142(2A) of the Act in the case of Shivhare Group, these syndicates had earned profit and had also incurred some expenses which were liable for disallowance. The amount of profits/ inadmissible expenses, considered by the AO framing the separate assessments of the syndicates, were the same as were considered while making the assessment in the hands of the appellant.

In view of the findings of the investigation wing, special auditor, AO of the appellant and AO of the syndicates, the income earned by the syndicates is taxable in the hands of syndicate and not in the hands of appellant. Therefore, making any addition on account of income earned by syndicate in the hands of appellant is nothing but double taxation of the same income. The settled law is that right income should be added in the hands of the right person and in the right year. Under the new scheme of the law, there is no option available to an Assessing Officer either to make the assessment in the hands of the AOP/BOI or in the hands of the members of the AOP/BOI. The similar view was expressed by the Hon'ble Apex Court in the case of ITO vs. Ch. Atchiaiah (1996) 218 ITR 239 (SC). The relevant findings of the Hon'ble Apex Court are reproduced as under:

"4. In our opinion, the contention urged by Dr. Gauri shanker merits acceptance. We are of the opinion that under the present Act, the ITO has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By "right person", we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the AO is not precluded from taxing the right person with respect to that income. This is so irrespective of the fact which course is more beneficial to the Revenue. In our opinion, the language of the relevant provisions of the present Act is quite clear and unambiguous. Sec. 183 shows that where the Parliament intended to provide an option, it provided so expressly. Where a person is taxed Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 wrongfully, he is no doubt entitled to be relieved of it in accordance with

law but that is a different matter altogether. The person lawfully liable to be taxed can claim no immunity because the AO (ITO) has taxed the said income in the hands of another person contrary to law. We may proceed to elaborate.

5. Sec. 3 of the Indian IT Act, 1922, as amended by the Indian IT (Amendment) Act, 1939, read as follows :

"3. Charge of Income-tax.--Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, HUF, company and local authority, and of every firm and other AOP or the partners of the firm or the members of the association individually."

(Emphasis, italicised in print, supplied) The expression "person" was defined in cl. (9) of s. 2 in the following words : "9. 'Person' includes an HUF and a local authority".

As against the above provisions, s. 4 of the Present Act [before it was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st April, 1989] read thus :

"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 of this Act in respect of the total income of the previous year or previous years, as the case may be, 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."

(The amendments made by the aforesaid Amendment Act of 1987 do not make any difference so far as the present controversy is concerned.) The expression "person" is defined in cl. (31) of s. 2 in the following words : "'Person' includes--

- (i) an individual,
- (ii) an HUF,
- (iii) a company,
- (iv) a firm,
- (v) an AOP or a BOI, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses."

A comparison of the provisions of both enactments immediately bring out the difference between them. Sec. 3 of the 1922 Act provided that in respect of the total income of a firm or an AOP, the income tax shall be charged either on the firm or the AOP or on the partners of the firm or on Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the members of the AOP individually. It is evident that this option was to be exercised by him keeping in view of the interest of Revenue. Whichever course was more advantageous to Revenue, he was entitled to follow it. In such a situation, it was generally held that once the ITO opted for one course, the other course was barred to him. But no such option is provided to him under the present Act. Sec. 4 extracted hereinabove says that income-tax shall be charged on the total income "of every person" and the expression "person" is defined in cl. (31) of s. 2. The definition merely says that expression "person" includes inter alia a firm and an AOP or a BOI whether incorporated or not. There are no words in the present Act which empower the ITO or give him an option to tax either the AOP or its members individually or for that matter to tax the firm or its partners individually. If it is the income of the AOP in law, AOP alone has to be taxed; the members of the AOP cannot be taxed individually in respect of the income of the AOPs. Consideration of the interest of revenue has no place in this scheme. When s. 4(1) of the present Act speaks of levy of income-tax on the total income of every person, it necessarily means the person who is liable to pay income-tax in respect of that total income according to law. The tax has to be levied on that person, whether an individual, HUF, Company, Firm, AOP/BOI, a local authority or an artificial juridical person. From this, it follows that if income of A is taxed in the hands of B, A may be legitimately aggrieved but that does not mean that B is exonerated of his liability on that account. B cannot say, when he is sought to be taxed in respect of the total income which is lawfully taxable in his hands, that since the ITO has taxed very same income in the hands of A, he himself cannot be taxed with respect to the said total income. This is not only logical but is consistent with the provisions of the Act. In this connection, it may be pointed out that where the Parliament wanted to provide an option, a discretion, to the ITO, it has provided so expressly. Sec. 183 [which has since been omitted w.e.f. 1st April, 1993 by the Finance Act, 1992] provided that in the case of an unregistered firm, it is open to the ITO to treat it, and make an assessment on it, as if it were a registered firm, if such a course was more beneficial to Revenue in the sense that such a course would fetch more tax to the public exchequer. Sec. 183 read as follows :

"183. Assessment of unregistered firms.--In the case of an unregistered firm, the Assessing Officer--

(a) may determine the tax payable by the firm itself on the basis of the total income of the firm, or

(b) if, in his opinion, the aggregate amount of the tax payable by the firm if it were assessed as a registered firm and the tax payable by the partners individually if the firm were so assessed would be greater than the aggregate amount of the tax payable by the firm under cl. (a) and the tax which would be payable by the partners individually, may proceed to make the assessment under sub-s. (1) of s. 182 as if the firm were a registered firm; and, where the procedure specified in this clause is

applied to any unregistered firm, the provisions of sub-ss. (2), (3) and (4) of s. 182 shall apply thereto as they apply in relation to a registered firm."

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 It may be mentioned that s. 183 corresponded to s. 23(5)(b) of the 1922 Act. The 1922 Act not only provided an option to the ITO in the matter of firm and AOP under s. 3 but also expressly enabled him to assess an unregistered firm as a registered firm [s. 23(5)(b)], if by doing so, more tax accrued to the State. The 1961 Act has omitted the first option, while retaining the second.

6. In this connection, it would be relevant to notice the relevant provisions of the draft Bill proposed by the Law Commission in its XIIth Report, which constitutes the basis for the 1961 Act. Clause (27) of s. 2 of the draft (definition of "person") did expressly provide an option similar to the one contained in s. 3 of the 1922 Act. Clause 27 read thus :

"(27) `Person' includes--

(i) an individual,

(ii) an HUF,

(iii) a company,

(iv) a firm or other AOPs, whether incorporated or not, or the partners of the firm or the members of the association individually,

(v) a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within sub-cl. (i) to (vi)" [Emphasis, italicised in print, supplied] In the "Notes on Clauses" appended to the draft, the Commission stated : "27. Person. The definition of `person' in existing s. 2(9) has been amplified.

The existing definition includes (a) HUF and (b) a local authority. The General Clauses Act, defines `person' as including a company or AOP or BOI whether incorporated or not. The charging section (s. 3) of the IT Act enumerates the units for taxation as `individual, HUF, company, local authority, firm and other AOPs or the partners of a firm or the members of the association individually'. Sec. 4 of the Act refers to a `person'. It seems desirable to have a comprehensive definition of the word `person' in the Act so as to cover all entities mentioned in--

(i) the existing definition [s. 2(9)].

(ii) the existing charging provisions [ss. 3 and 4], and

(iii) the General Clauses Act.

The definition has therefore been amplified on the above lines." The Parliament, however, chose not to accept the suggested definition in toto; it deleted the words indicating the option. The Committee, which drafted the draft Bill comprised Sri P. Satyanarayana Rao, Sri G.N. Joshi and Sri N.A. Palkhivala, who was specifically appointed as a member for the purpose of the revision of the IT Act. [Extracts are taken from the XIIth Report of the Law Commission of India, published by Govt. of India, Ministry of Law.]

7. This question has also been troubling the High Courts in the country. As a matter of fact, Patna and Andhra Pradesh High Courts have taken different views. Be that as it may, we may mention that the Patna High Court in Mahendra Kumar Agrawalla vs. ITO 1975 CTR (Pat) 33 : (1976) 103 ITR 688 (Pat), Punjab and Haryana High Court in Rodamal Lalchand Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 vs. CIT (1977) 109 ITR 7 (P&H), Andhra Pradesh High Court in Choudry (supra) and Delhi High Court in Punjab Cloth Stores vs. CIT 1978 CTR (Del) 257 : (1980) 121 ITR 604 (Del) have taken the view which we have taken. On the other hand, Madras High Court in CIT vs. Blue Mountain Engg. Corp'n. 1978 CTR (Mad) 142 : (1978) 112 ITR 839 (Mad) and Patna High Court in its earlier decision in CIT vs. Pure Nichitpur Colliery Co. 1975 CTR (Pat) 83 : (1975) 101 ITR 79 (Pat) have taken the opposite view. The Andhra Pradesh High Court first expressed the other view, then in Choudry it took the view which we have taken and again in B.R. Constructions (FB) (supra) it has gone back to the other view and reiterated the view taken in the judgment under appeal. In Ramanlal Madanlal vs. CIT (1979) 116 ITR 657 (Cal), Sabyasachi Mukharji, J., speaking for a Bench of the Calcutta High Court, recognised the distinction in the language employed in s. 3 of the 1922 Act and s. 4 of the present Act but that was a case of an unregistered firm where the ITO had assessed the incomes in the hands of the partners individually. In such a situation, the learned Judge held, the ITO cannot, at the same time, bring the unregistered firm to tax in respect of the very same income. Sec. 183 was also referred to in that connection.

The decision of the High Courts taking the contrary view appears to have been influenced largely by the decisions of this Court in CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) : TC 6R.197 and CIT vs. Murlidhar Jhawar & Purna Ginning & Pressing Factory (1966) 60 ITR 95 (SC) which were rendered under the 1922 Act and have not given due weight to the marked difference in the language of the relevant provisions in the two enactments."

4.7.3 In view of the specific finding of the Hon'ble Supreme Court, I am of the firm view that income derived by various syndicates, in which the appellant was found one of the members, was required to be assessed in the hands of such syndicates only and a direct assessment in the hands of the appellant could not have been made in respect of such income derived by the syndicates. Even the question of admissibility or inadmissibility of any expenditure could have been raised only while making the assessment in the cases of such syndicates. In my view, the appellant could have, at the best, been assessed in respect of his share in taxable income of such syndicates but for the provisions of section 86 of the Income Tax Act, 1961, which provide that income tax shall not be payable by an assessee in respect of his share in the income of the association of persons or body of individuals.

4.7.4 The AO while making the addition in the hands of the appellant, has worked out the appellant's share in each of the syndicates under consideration. It is thus evident that the syndicates formed as AOP or BOI are such in which the shares of their members are determinate and known. In such circumstances, the share of the appellant, being a member of such AOP/ BOI, would be required to be computed in accordance with the provisions of section 67A of the Act. However, in view of the specific provisions of clause (a) of the proviso to section 86 of the Act, where the Association of Persons or Body of Individuals is Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 chargeable to tax on its total income at the maximum marginal rate or at any higher rate under any of the provisions of Act, the share of a member in the income of such AOP/BOI as computed under section 67A shall not be included in the total income of such member. In my view, in the instant case, all the conditions for invoking the clause (a) to section 86 of the Act are getting explicitly fulfilled. For a ready reference, the provisions of section 86 are being reproduced as under:

"S. 86: Share of member of an association of persons or body of individuals in the income of the association or body.-Where the appellant is a member of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India), income-tax shall not be payable by the appellant in respect of his share in the income of the association or body computed in the manner provided in Section 67A.

Provided that,-

(a) where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate under any of the provisions of this Act, the share of a member computed as aforesaid shall not be included in his total income;

(b) in any other case, the share of a member computed as aforesaid shall form part of his total income:

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case."

4.7.5 Briefly, (i) the appellant was a member of an Association of Persons or Body of Individuals; (ii) share of the members of such Association of Persons or Body of Individuals were determinate and known; and (iii) such Association of Persons or Body of Individuals were chargeable to tax on their total income at the maximum marginal rate or any higher rate. In such circumstances, the appellant's case would squarely fall under substantive provisions of section 86 of the Act read with clause (a) of the first proviso to such section 86 and the other clause (b) of the first proviso and as also, the second proviso would have no application. Accordingly, in my view, there was no justification for the AO in making the addition in the appellant's income on account of his share in

profit of the syndicates and as also, on account of his share in inadmissible expenses incurred by the syndicates. Further, the impugned documents were not found from premises of appellant and were also found from third party premises.

4.7.6 I also find force in the contention of the appellant that on the basis of the various documents and data seized during the course of search from the appellant and other persons, after passing the impugned order, the Revenue has also separately assessed some syndicates, in the status of AOP, under s.144/153C r.w.s. 153A of the Act. I also find that while framing the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 assessments in the case of such syndicates, the income of the syndicates as worked out by the Special Auditors have duly been incorporated and have been subjected to maximum marginal rate of tax. Such fact fortifies the claim of the appellant that any income of the syndicates were liable to be assessed separately in the hands of the respective syndicates only, in the status of AOP/ BOI, at the maximum marginal rate and the appellant's share in the profit of such syndicates cannot be added to the individual income of the appellant in view of the specific provisions of section 86 read with section 67A of the Act. Accordingly, in view of the findings given above, the additions made by the AO amounting to Rs. 69,98,079/- in AY 2010-11, Rs. 2,31,19,457/- in AY 2011-12, Rs. 6,26,53,801/- in AY 2012-13, Rs. 5,89,58,701/- in AY 2013-14, Rs. 7,75,08,425/- in AY 2015-16 and Rs. 1,32,43,450/- in AY 2016-17 are Deleted. Therefore, appeal on this ground is Allowed."

7.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us. Further, aggrieved with the findings of the Id. CIT(A) in holding that the assessee had carried out business through formation of Syndicates, the assessee has raised separate grounds before us.

7.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue. The learned CIT(DR) argued that in the instant case, ample of documentary evidences and tally data were found during the course of the search and from such material, it was evident that the assessee had carried out unaccounted business of liquor by forming syndicates and groups with other persons. It was further contended that many of the syndicates could not be subjected to tax and therefore, for collecting the due tax for the ex-chequer, the tax should be collected from its members and assessee is one of the members. It was submitted that if the action of the learned CIT(A) is confirmed, then, it would result into a huge revenue loss. Finally, the learned CIT(DR) placed the reliance on the detailed findings given by the AO in the Assessment Order.

7.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made by him before the Id. CIT(A), as has been placed in the Paper Books before us, and has also filed short hand notes before this Bench. The assessee's counsel at the first place, in support of his grounds raised before us, agitated the findings given by the AO, which was also confirmed by the Id. CIT(A), that the assessee had formed the syndicates with various other persons for carrying out the business of liquor with a definite share of profit in the syndicates. The relevant part of the assessee's submission for this contention, as made before the Id. CIT(A), is being reproduced as under:

"1.00 Your Honour, in the instant case, during the course of the assessment proceedings, the learned AO based upon the report, under the provisions of s.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 142(2A) of the Act, submitted by the special auditors, issued a show cause notice to the appellant under s. 142(1) of the Act, on 23-07-2018 [kindly refer PB Page No. 151 to 189] by making allegations that the appellant was carrying out liquor business by forming various syndicates with various persons and in such syndicates, the appellant had made undisclosed investment and had also derived share in profit earned by such syndicates. It was further averted that the syndicates had incurred certain expenses which were not admissible in accordance with the law. After making such allegations, the appellant was show caused as to why an amount of Rs.69,98,079/- be not treated as his undisclosed income in respect of his share of profit in the syndicates, share in inadmissible expenses of syndicates and undisclosed capital investment in the syndicates, for the previous year under consideration.

1.01 In response to such show cause notice, the appellant strongly objected to have formed any syndicate or AOP with any person for carrying out the liquor business. The appellant submitted that he was carrying out the liquor business in his individual capacity only and profit derived from such business was duly shown in his return of income under the head 'Profits and gains from business or profession'. The appellant completely denied to have derived any share of profit from any syndicate and as also making of investment in any syndicate. A copy of the reply dated 03-08-2018 furnished by the appellant before the learned AO is placed at page No. 190 to 272 of our Paper Book. It is submitted that the appellant's reply so made before the ld. AO may be taken into consideration for adjudicating the present appeal.

1.02 Your Honour, despite appellant's submission and denial of having formed any syndicate or group with any person, the learned AO, while framing the assessment made an addition of Rs.69,98,079/- in the appellant's income on account of appellant's share of profit from such syndicates/ groups. The learned AO made his findings from para (14.0) at page no. 20 to para (14.11) at page no. 52 of the impugned order. The learned AO, by way of giving a table at para (14.11), determined the assessment year wise addition made on the above counts.

2.00 Your Honour, the findings given by the learned AO in the body of the assessment order and as also making of the huge additions of Rs.69,98,079/-, as aforesaid, were not warranted in view of the facts and circumstances of the appellant's case and submissions set out in the ensuing paras.

3.01 Your Honour, the appellant is an under-educated person of the age of nearly 57 years. He belongs to 'Jaiswal' community and since ages, his ancestors are carrying out liquor business. Almost, 30 years back, he started liquor business on his own and since then he himself and his family members are carrying out the retail trading of Country liquor (CL) and Indian-made Foreign liquor (IMFL).

3.02 That, during the entire period covered under the assessment proceedings carried out under s. 153A, the appellant's principal area of operation of business was mainly situated in the states of Madhya Pradesh and Uttar Pradesh only.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 3.03 That, in any State, liquor business has to be carried out only in accordance with the relevant laws of Excise legislated by the concerning

state and as also, in accordance with the rules, regulations and policies framed under such legislations from time to time. Accordingly, in the state of Madhya Pradesh, as per the policies prevailing for the last 8-10 years, first the State Excise Authorities, identifies the areas/ shops where from the retail sale of intoxicant, which inter- alia, includes liquor, can be sold. The right or privilege to sell liquor is given by grant of a liquor license. These licenses are granted for a period of one year. Such license is given for a consideration and is granted to the person who gets himself agreed for payment of highest local Excise duty, during the period of license, for any particular shop. For such purpose, the State Excise Authorities, by paper publications and gazette notifications, invites tenders from the interested bidders who wish to obtain right to sell liquor from any particular shop, commonly known as liquor license. The person bidding is commonly known as Liquor Contractor. Before participating in the bid, the liquor contractor is required to deposit a certain percentage of the license value for which he intends to bid. After bidding, the liquor contract for any liquor shop, in any specified area, is awarded to the highest bidder. Thus, the highest bidder for any shop, gets the license for one year to sell the liquor, in retail, subject to his agreeing to pay a minimum amount by way of duty for which he had made the bid. After bidding, the successful liquor contractor has to furnish bank guarantee of the stipulated amount in favour of the Excise Authorities. After getting the license, the liquor contractor has to identify any shop in the specified area at his own. After opening the shop, the contractor is required to procure the material (liquor), from the district warehouse of the Excise department (hereinafter referred to as the designated warehouse). For procuring material every time, over and above payment of duty at the prescribed rate, he is also required to make payment for the material, which in the case of purchase of country liquor is also known as Ceiling Charges. The IMFL is also uplifted from the designated warehouse by the liquor contractor. The designated warehouse obtain such IMFL from the various liquor manufacturing units, who have been so licensed and authorized on this behalf. After procuring the material from time to time, the liquor contractor effects sale thereof strictly in cash from his shop. As per Rule XV of General License Conditions under Other Madhya Pradesh Rules under the Madhya Pradesh Excise Act, 1915, all sales under licences for the sale of country liquor or for the retail sale of intoxicating drugs shall be for cash only, and such cash shall be paid over at the time of sale only. After collection of cash from sales, from time to time, either the cash is deposited into the Bank by the liquor contractor or it is utilized for making payment to the Excise Authorities towards duty or to the warehouses towards purchase of material. It is submitted that many a times, on the insistence of the designated warehouses and the State Excise Authorities, the liquor contractor is required to make direct payment to the liquor manufacturing company on behalf of the Department of Excise, State Government.

4.04 That, in a particular financial year, a liquor contractor may hold several licenses for retail sale of liquor in various areas through various shops. Such sales are effected by the salesmen deputed on each shop by the liquor contractor Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 himself. At the end of each day, every shop incharge use to send one daily consolidated report of a day to head office. In such daily report, the shop incharge, specifies the quantity of sales, rate of sales and as also amount of sales made on a particular day. In such report, the utilization of sales proceeds, in the form of cash, is also mentioned such as whether it was deposited in bank account or it was used for payment of duty or for payment to warehouse or for incurring day to day petty expenses. After obtaining daily sales report, in respect of various shops, a consolidated entry for

sales is made by the liquor contractor in his regular cash book. Likewise, consolidated entries in respect of purchases, payment of duties, deposits in bank accounts and expenses etc. are made by the liquor contractor in the regular cash book maintained by him on day to day basis. From such cash book, in the computerized system, entries automatically get posted to concerning accounts. At the end of every financial year, the books of accounts are finalized on the basis of trial balance extracted and thereafter Financial Statements are drawn. It is submitted that the appellant was also regularly maintaining such accounts and maintenance of such accounts was also verified by the search party. During the course of search under s. 132 in appellant's premises, the search party had also found these regular accounts maintained in his computer system and soft copies of all such accounts were also taken by them and such soft copies were placed on record of the assessing officer.

4.05 That after drawing the financial statements from year to year, the appellant used to get his books of accounts, regularly maintained in the ordinary course of business, duly audited from some qualified Chartered Accountants and also used to get Audit Reports, in the prescribed form no. 3CB and 3CD, under the provisions of section 44AB of the Income Tax Act, 1961. A copy of the Audited Financial Statements along with the Tax Audit Report, pertaining to the previous year under consideration, was already placed on record of the assessing officer. Such Audited Financial Statements are placed at page no. 66 to 72 of our paper book.

4.06 That, after obtaining Tax Audit Report under s. 44AB of the Act, the appellant used to furnish his returns of income, quite regularly, under the provisions of section 139(1) of the Act and in such returns, for year to year, the appellant, inter-alia, incorporated his income from liquor trade. It is submitted that for the assessment year under consideration, the appellant had shown an income of Rs.22,66,929/-, from carrying out the liquor trade business, in his Return of Income furnished for the year under consideration [kindly refer PB Page No. 64].

5.01 That, as noted by the learned AO herself at para No.(vi) at page No.22 of the impugned assessment order, the license granted to a liquor contractor in respect of any particular shop or area cannot be sold, transferred or sub-leased to any other contractor, without the written permission of the Collector. It can also not be transferred to any partnership without the written permission of the Collector. Any such transfer is duly endorsed on the license. For a ready reference, we are reproducing herewith the relevant condition for grant of license, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 as enumerated in the General License Conditions under Other Madhya Pradesh Rules under the Madhya Pradesh Excise Act, 1915, as under :

"VI. Transfer or sub-lease of Licence. - No privilege of supply or sale shall be sold transferred or sub-leased, nor shall a holder of any such privilege enter into a partnership for the working of such privilege in any way or manner without the written permission of the Collector, which shall be endorsed on the licence. A partner sub-lessee, or transferee shall be bound by all the conditions of the licence, but the original licensee shall also continue to be responsible to the State Government for the due payment of the licence fee and proper working of the shop."(emphasis supplied) 5.02 That, during the course of the assessment proceedings, it was submitted before the learned AO that in the liquor trade, no purchase could be made from any private party. All the purchases have to be made only from the State Government, through its State Excise Department, after making payment

of duties and cost of materials. The State Excise Authorities, while receiving the payment, are compulsorily required to collect tax at source in accordance with the provisions of section 206C of the Income Tax Act, 1961. It was further submitted that in the appellant's case, no variation of even a single penny had arisen between the purchases and TCS thereon shown by the appellant in his regular books of accounts and that shown by the State Excise Authorities in their annual returns submitted before the Income Tax Authorities in respect of TCS made by them. Thus, in other words, purchases and payment of duties shown by the appellant in his Audited Financial Statements were fully verifiable and in such circumstances, there could not have been any slightest doubt as regard to suppression of any purchases in his Audited Books of accounts.

5.03 It was also submitted before the learned AO that, in response to the returns of income furnished by the appellant under s. 139(1) of the Act, in respect of three of the assessment years, i.e. for A.Y.2010-11, A.Y.2011-12 and A.Y. 2012-13, assessments were completed under s. 143(3) of the Act, after full verification of books of accounts and other records of the appellant. It is submitted that, during the course of such assessments, neither the books of account of the appellant were rejected, nor the trading results shown by the appellant in his books were disturbed. Further, during the course of such assessments under s. 143(3), not a single finding as regard to formation of any syndicate by the appellant or deriving of any income by the appellant from any such syndicate was given.

6.00 Your Honour, the learned AO has made the allegation that the appellant was carrying out business of liquor trade by forming syndicates/ groups with various persons and in support of such allegation, the learned AO has made various findings in the body of the assessment order. In this regard, it is submitted that none of the findings of the learned AO is justifiable for the basic reason that without seeking the prior approval of the license granting authority, no one is permitted to assign the license in favour of anyone else or to any syndicate or group. It is submitted that the findings of the learned AO are based only upon some loose papers/ documents/ datas recovered from the premises of third person without taking into consideration various documentary evidences Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 placed on his record. As has been demonstrated in the subsequent paras, all the findings of the learned AO are incorrect and not sustainable in the eyes of the law.

6.01 That, the first averment made in the impugned assessment order, on the subject issue, to the effect that during the course of search under s. 132 carried out at various premises, incriminating evidences pertaining to the appellant were seized, which to the best of the knowledge and belief of the appellant, is factually incorrect. It is submitted that the whole assessment of the learned AO is hinging on the pivot of some loose papers/ datas which were not found in the premises of the appellant and there is no positive material on record that such loose papers/ datas were prepared either by the appellant or by anyone else on the instruction of the appellant.

6.02 That, the second averment made in the impugned assessment order that the appellant had formed various syndicates/cartels/groups, in different districts, as self organizing group formed to transact specific business, to pursue or promote a shared interest is also factually incorrect. The fact remained that the appellant had not formed any syndicate/ group either for the purpose of carrying

out liquor business jointly or for the purpose of deriving any income there from and therefore, the question of his earning any income from any syndicate/ group, in any of the assessment years under consideration, does not arise at all.

6.03 That, the third averment made in the impugned assessment order that the existence of syndicate was also accepted by the key members of the group, it is submitted that first of all, there is no alleged group as such of the various persons, as referred to by the learned AO at para (14.2) of the impugned assessment order. It is submitted that Shri R.S. Shivhare, Shri L.N. Shivhare and Shri Ashish Shivhare, whose names have been mentioned in the above referred para, are not family members of the appellant. It is submitted that the appellant was carrying out his liquor business independently and the above named persons were not in any manner associated with the retail liquor trading business of the appellant. It is further submitted that during the course of the assessment proceedings, despite making a request before the learned AO, the aforesaid persons were not produced before the appellant for cross examination. In these circumstances, any statement allegedly given by Shri R.S. Shivhare, Shri L.N. Shivhare and Shri Ashish Shivhare cannot be used, as an evidence against the appellant.

6.04 Your Honour, the Id. AO at para (14.2.iii) has also averted that during the course of the search, statement of the appellant was also recorded and the appellant, alike other persons, had also accepted to have formed many syndicates. It is submitted that the appellant never admitted to have formed any syndicate for carrying out any business of liquor with a view to share the profits of syndicate with various members thereof. In evidence of such fact, we are submitting herewith a copy of the statement of the appellant, recorded under s. 132(4) of the Act, as Annexure A-12.00[PB Page No. 294 to 318].

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 6.05.1 Your Honour, on the issue of cross-examination, the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries V/s. Commissioner of Central Excise, Kolkatta-II 2016 (15) SCC 785 (SC) was pleased to hold as under:

"5. According to us, not allowing the Appellant to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the Appellant was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the Appellant disputed the correctness of the statements and wanted to cross examine, the Adjudicating Authority did not grant this opportunity to the Appellant. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the Appellant. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross examination of the said dealers could not have brought out any material which would not be in possession of the Appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the Appellant wanted to cross-examine those dealers and what extraction the Appellant wanted from them.

6. As mentioned above, the Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

7. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice."

6.05.2 The Hon'ble Supreme Court, again, in the case of Ayaaubkhan Noorkhan Pathan vs. The State of Maharashtra and Ors., 2013 AIR 58 (SC) was pleased to hold as under:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "23. A Constitution Bench of this Court in State of M.P. v. Chintaman Sadashiva Vaishampayan AIR 1961 SC 1623, held that the rules of natural justice, require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross- examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also: Union of India v. T.R. Varma, AIR 1957 SC 882; Meenglas Tea Estate v. Workmen, AIR 1963 SC 1719; M/s. Kesoram Cotton Mills Ltd. v. Gangadhar and Ors., AIR 1964 SC 708; New India Assurance Co. Ltd. v. Nusli Neville Wadia and Anr. AIR 2008 SC 876; Rachpal Singh and Ors.v. Gurmit Singh and Ors.AIR 2009 SC 2448; Biecco Lawrie and Anr. v. State of West Bengal and Anr. AIR 2010 SC 142; and State of Uttar Pradesh v. Saroj Kumar Sinha AIR 2010 SC 3131).

24. In Lakshman Exports Ltd. v. Collector of Central Excise (2005) 10 SCC 634, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e. permission with respect to the cross-examination of a witness. In the said case, the Appellant had specifically asked to be allowed to cross-examine the representatives of the firms concern, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant

should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. He can therefore, do so by cross- examining the witnesses produced against him.

The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross examination.

29. In *Rajiv Arora v. Union of India and Ors.* AIR 2009 SC 1100, this Court held:

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice." [Emphasis supplied] 6.05.3 The Hon'ble Gujarat High Court in the case of the Principal Commissioner of Income Tax Ahmedabad and Ors. vs. Kanubhai Maganlal Patel 2017 (3) TMI 271 (Guj.) has held as under:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "12. We have heard Shri Varun K Patel, learned counsel appearing on behalf of the Revenue at length. It emerges from the impugned orders and even the order passed by the Assessing Officer that the Assessing Officer made additions under Section 69B of the Act, relying upon the statements of two farmers [i.e., two sellers of the land] in which, according to the Department, they admitted of having received on-money in cash. However, it is required to be noted and it is an admitted position that the statements of those two farmers upon which reliance was placed by the Department were not furnished/given to the appellant to controvert the same. Not only that when a specific request was made before the Assessing Officer to permit them to cross examine the aforesaid two farmers, the same was rejected by the Assessing Officer. Under the circumstances, as rightly observed by the learned Tribunal, the Assessing Officer was not justified in making addition under Section 69B of the Act solely relying upon the statements of those two farmers.

13. We see no reason to interfere with the findings recorded by the learned Tribunal. We are in complete agreement with the view taken by the learned Tribunal while deleting the addition made by the Assessing Officer made under Section 69B of the Act. No substantial question of law arises."

6.05.4 The Hon'ble Gujarat High Court, again, in the case of the Commissioner of Income Tax-V vs. Indrajit Singh Suri 2013 (8) TMI 111 (Guj.) has held as under: "The entire issue is based on factual matrix presented before the authorities. We are in complete agreement with the findings of the Tribunal that the Assessing Officer had largely proceeded on the basis of the statement of one Shri Gajjar in whose books of account, the said transaction of Ninad Co-op. Housing Society had emerged. It further appears that no opportunity of cross examination of Shri Gajjar, though requested for, was granted by the Assessing Officer. Cumulatively, thus, when the Tribunal found that there was violation of principles of natural justice by not allowing cross examination despite

such request coupled with absence of any evidence, no error much less any substantial error is committed by the Tribunal in deleting the said amount. This issue, therefore, requires no further consideration."

6.05.5 The Hon'ble Gujarat High Court, again, in the case of the CIT vs. Supertech Diamond Tools Pvt. Ltd. 2013 (12) TMI 1529 (Guj.) has held as under: "The reference to the statements made by some of the persons related with the said investing companies is of no effect because such statements could not have been utilized against the appellant Company when the appellant company had not been afforded an opportunity of confronting and cross-examining the persons concerned. There does not appear anything occurring in the statements of the persons relating with the appellant Company so as to provide a basis for the findings recorded by the AO." [Emphasis supplied] 6.06 Your Honour, as regard to the statement of Shri R.S. Shivhare, recorded under s. 132 on 08-03-2016, it is submitted that in reply to question no. 2, Shri R. S. Shivhare, had stated that the liquor business is carried out by each of the persons, individually, i.e. in his personal capacity by maintaining their accounts Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 individually. It was also stated by him that no formal or in the legal form, any syndicate had been formed by him.

6.07 Your Honour, it was submitted before the learned AO that the liquor retail trade is carried out on the basis of a periodical license granted by the State Excise Authorities. It was reiterated that the license so obtained by any liquor licensee was not transferable and it could not be transferred to any partnership firm or group even if the licensee himself was a partner or member of such firm or group. Such an exercise requires written permission of the concerning State Excise Authorities. It was also submitted that during the course of the entire Search, not even in a single premises any evidence of grant of any permission, for transfer of any license by any person to any firm or association or syndicate or group, by any Excise Authorities was found.

6.08 Your Honour, at para (v) at page No.22 of the impugned assessment order, the learned AO has averted that some investigations in the form of correspondence with various departments were made by him. It has further been averted that online searching of data as well as third party inquiries revealed that there existed a syndicate and various appellants were part of such syndicate. In this regard, it is submitted that first of all the averment so made by the learned AO is factually incorrect. Even otherwise, it is submitted that all such third party inquiries were never confronted to the appellant during the course of the assessment proceedings and, therefore, no reliance ought to have been placed by the learned AO on such inquiries for reaching to some conclusion against the appellant, as per the various judicial pronouncements, already referred to in the preceding paras.

7.01 Your Honour, as regard the references of various Tally accounts/ so-called evidences alleged to have been seized from various premises, as per details given at page No. 24 to 31 of the assessment order, it is submitted that first of all the appellant is not aware of maintenance/ preparation of any tally data/document, as referred to in the impugned order, secondly, such tally accounts/ documents have not been prepared either by the appellant or by anyone on his instruction. It is further submitted that under the provisions of section 292C(1)(i) of the Act, the prima-facie presumption which prevails upon finding of any books of account or document in anyone's

possession is that the books of account or document belongs to the person from whose possession it is found. It will be appreciated that none of the tally accounts/ other evidences, relied upon by the learned AO, were found either in possession or control of the appellant. Undisputedly, all these materials were allegedly found in possession of a third person. Accordingly, it was incumbent upon the assessing officer to first seek the explanation of the concerning person on the seized materials and then only, the appellant could have been asked to tender his explanation on the said material and that too, after apprising the appellant about the explanation of the person from whose possession such material was found and as also after giving due opportunity of cross examination of such person to the appellant. However, in the instant case, unfortunately, the learned AO has not undertaken all these exercise and instead, directly ventured to seek the appellant's explanation on such material. As the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 appellant was not the author/ creator of these materials, he was unable to make his explanation on each and every paper.

7.02.1 During the course of the assessment proceedings, the appellant had clearly expressed his apprehension that one of the accountants (who had been working for the appellant till search for several years and who has since been terminated) was also looking after accounting affairs of many other liquor contractors and probably, either himself or in connivance with some other mischievous persons, with some ulterior motive or for some statistical purpose or for any other purpose, best known to him only, he might have recorded the business transactions of all his clients, carried out separately and individually, in one single tally account which were so found. It is submitted that upon going through tally accounts, referred to by the learned AO, it has been observed that besides recording transactions of many of his clients at one place, the accountant further went mischievous by incorporating even those imaginary transactions, which it is believed, could not have actually taken place in case of any of liquor contractor clients of that accountant. It was also submitted that in such books some those types of transactions have been entered which in reality do not take place in the liquor business. The liquor business is a legalized business which is carried out under a lawful license granted by the State Excise Authorities and therefore, not only for the appellant but even for other liquor contractors, there could not have been any reason to provide any illegal gratification to anyone. Such entries of gratification in the tally accounts, by themselves, completely falsify the credence of such accounts.

7.03 Your Honour, in the instant case, the learned AO has made an allegation that the appellant had formed various syndicates/ groups with various persons but except making such allegation he could not bring on record many vital facts such as (i) when such syndicate/ group was formed; (ii) what was the mode of formation of syndicate/ group, whether oral or written; (iii) the place at which such syndicate/ group was formed; (iv) who were the other members of the syndicate/ group; (v) the specific purpose of the syndicate/ group, the place of operation of the group; (vi) profit/ loss sharing ratio of the members of the group;

(vii) manner of distribution of profit/ loss of the group etc.. It is submitted that unless and until, the full identity of all the members of a group are made known, no allegation as regard to forming of any so-called group or syndicate can validly be made. It shall be appreciated that whenever any syndicate or AOP or partnership is formed, some documents are necessarily prepared between the

members of such syndicate or AOP or partnership for determining the purpose, sharing ratio, capital contribution etc. of the members. However, in the instant case not even a single document of formation of any syndicate or group was found from any of the premises. It is submitted that allegation of formation of syndicate is mere assumption and not a reality.

7.03.1 Your Honour, in the instant case, the learned AO has not conducted any independent enquiry that whether or not the appellant was running any liquor business by forming any syndicate. The learned AO could have deputed his officios for conducting enquiries at the places where the appellant had claimed to have run liquor shops in his individual capacity in the past. From the enquiries, it Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 could have been gathered that whether it was appellant only or some other persons too, who were running the shops, in the capacity of owner. The learned AO could have also made necessary enquiry from the employees and as also from the landlords of the shops, from which the appellant was running his liquor business. Merely on the basis of tally datas, which by themselves are not reliable and have no credence, the learned AO ought not to have formed a view that the appellant was carrying out the business of liquor by forming syndicates/ groups.

7.04 Finally, it is submitted that in view of the facts and circumstances of the appellant's case and as also the submissions made herein above, it shall be appreciated by Your Honour that the allegations made by the learned AO in the body of the assessment order to the effect that the appellant had formed various syndicates/ groups for carrying out his liquor business, have no legs to stand and therefore, such allegations deserve to be negated at threshold only. Once, the allegation of forming any syndicate/ group gets disproved, the consequent additions made by the learned AO, in the appellant's income, on such presumption would also get deleted automatically.

8.00 Your Honour, without prejudice to the above and without in any manner admitting that the appellant had formed any syndicate/ group for carrying out his liquor business, it is submitted that even for the sake of assumption, the allegation of the learned AO, on this count, is taken to be true on its face even then, the additions made by the learned AO on the various counts are not correct and sustainable in view of the foregoing discussion.

9.00 Your Honour, the learned AO, while framing the assessment for the year under consideration, has made an addition of Rs.69,98,079/- in the appellant's income on the allegations of the appellant having formed various syndicates and derived share of profit from such syndicates.

9.01 Your Honour, during the course of the assessment proceedings, the appellant, vide its letter dated 03-08-2018, had, without admitting formation of any syndicate and making of any investment therein, demonstrated that in the said table, some mistakes of principle had got crept-in. It was submitted that in the table, alleged share of profit of the appellant from various syndicates, in a year, was duly taken into consideration but on the other hand, the similar nature of share of loss from such syndicates had not been taken into consideration. It was submitted that even the Special Auditors, who worked out the share of profit of the appellant from various syndicates in various years, had worked out the share of loss of the appellant from such syndicates. A copy of the relevant summary of share income of the appellant from various liquor businesses during the period from

01-04-2009 to 31-03-2016, as prepared by the Special Auditors, is being submitted herewith for kind perusal and record of Your Honour, as Annexure A-13.00 [PB Page No.319 to 321].

10.00 Your Honour, based upon the table given by the then learned AO in his show cause notice and the Special Auditors Report, we have prepared a master statement showing syndicate-wise addition made by the learned AO, under the different heads, for the relevant assessment year. A copy of such master Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 statement is being submitted herewith for kind perusal and ready reference of Your Honour, as Annexure A-14.00 [PB Page no. 322].

10.01 Your Honour, on a perusal of the master statement, it shall be observed by Your Honour that none of the incriminating documents, on the basis of which, additions of Rs.69,98,079/- have been made in the appellant's income were found or seized from the appellant's premises. It shall be observed by Your Honour that most of the documents were found from the premises of third parties and therefore, the presumption under section 292C was not available to the learned AO against the appellant without first positively bringing on record that such documents contain the transactions relating to the appellant.

10.02 Your Honour, the learned AO has made the subject additions on the basis of some loose papers, excel sheets etc.. This seized material has been identified by the Special Auditors as well as the learned AO in the form of E-9. A Copy of such seized material is being furnished herewith for kind perusal and verification by Your Honour, as Annexure A-15.00 [PB Page No. 323].

11.00 Your Honour, in view of the above facts and circumstances, it shall be appreciated that even on merits, the placement of reliance by the learned AO on the subject loose papers was not called for. It is therefore submitted that the additions so made by the learned AO on the incomplete and unreliable material, seized from the premises of third persons, deserve to be fully deleted."

7.6.1 The assessee after making submissions for grounds raised by him, agitated the ground raised by the revenue against the deletion of the addition made by the CIT(A) on account of assessee's share in profit and inadmissible expenses of the syndicates. The relevant abstracts of the assessee's submission, as made before the ld. CIT(A), are as under:

1.00 In this context, without in any manner admitting that the appellant had formed any syndicate or group for carrying out any business even if, based upon the findings given by the learned AO in the assessment order itself, it is presumed that the appellant had formed various syndicates/ groups (AOPs) for carrying out the business of liquor with other persons and had derived share of income from such syndicates then also, no addition was warranted in the appellant's hands in view of the foregoing submissions.

2.01 That, while passing the impugned assessment order, at various places such as at paras (14.1), (14.2), (14.3), (14.4) in the body of the order, it has been alleged that the appellant had formed various syndicates/ groups with other persons for carrying out

the liquor business. It has further been asserted that in such syndicates, the appellant made certain investments by way of contribution of capital and also derived certain share in profit of such syndicates. Besides, in the body of the assessment order, it has also been asserted by the learned AO that such syndicates incurred some expenses which were not admissible as deduction from the net profit of the syndicates, in accordance with provisions of the Income-Tax Act, 1961.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 2.02 That, the working of the alleged undisclosed investments, alleged share of profit of the appellant in the syndicates and alleged share of the appellant in the inadmissible expenses incurred by such syndicates have been given, by way of a table, at para (14.7) of the subject assessment order. After considering the appellant's submission on the issues, the final addition on this count has been determined at paras (14.10) & (14.11) of the subject assessment order.

2.03 That, in the last table at page no. 51 of the order, the details of the additions have been given wherein it has explicitly been stated that what is being added is the appellant's share in the profit of syndicates and as also share of profit in inadmissible expenses. Thus, undisputedly, both the items have been regarded as the share of profit of the appellant from syndicates.

2.04 That, as per findings given in the subject assessment order itself, the appellant had formed various syndicates/ groups with various persons for carrying out the business of liquor and in such syndicates/ groups the appellant was having a definite, determinate and known share. Thus, there cannot be two views that according to the subject assessment order, the appellant derived share of income as a member of an association of persons (AOP), with the determinate and known share. Accordingly, in the instant case, for the relevant assessment year, the appellant's share in the income of the AOPs, as a member, in accordance with the provisions of section 67A would work out to be as under:

Sno.	Description	Amount
1	Share of Profit in various syndicates (AOPs)	69,98,079
2	Share of Profit in inadmissible expenses (AOPs)	Nil
		69,98,079
3	Less	
	Share of Loss in various syndicates (AOPs)	Nil
	Net Share of Profit in various AOPs u/s.	69,98,079
	67A	

2.05 That, undoubtedly, the entire share of income of the appellant in various AOPs, as determined in the assessment order itself, at Rs.69,98,079/- has duly been incorporated and included in the total assessed income of the appellant at Rs.2,09,99,091/-.

2.06 That, as per the provisions of section 86, as contained in Chapter VII of the Income-Tax Act, 1961, the entire share of the appellant in income of the Association of Persons, as computed in the

manner provided in section 67A is not chargeable to income-tax. Further, since, undisputedly, such syndicates are separately chargeable to tax on their respective total income, at the maximum marginal rate, in accordance with the proviso (a) to section 86 of the Act, the share of the appellant, as a member in the syndicates, ought not to have been included in his total income. For a ready reference, the provisions of section 67A & 86 of the Income-Tax Act, 1961 are being reproduced as under:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "CHAPTER VI
AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD LOSS
Aggregation of Income Method of computing a member's share in income of
association of persons or body of individuals.

S. 67A(1) In computing the total income of an appellant who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known [other than a company or a co-operative society or society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India], whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely :- (a) Any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year shall be deducted from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body;

(b) Where the amount apportioned to a member under clause (a) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be added to that amount, and the result shall be treated as the member's share in the income of the association or body;

(c) Where the amount apportioned to a member under clause (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year shall be adjusted against that amount, and the result shall be treated as the member's share in the income of the association or body.

(2) The share of a member in the income or loss of the association or body, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.

(3) Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.

Explanation : In this section "paid" has the same meaning as is assigned to it in clause (2) of section 43."

"CHAPTER VII Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17
INCOMES FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS
PAYABLE Share of member of an association of persons or body of individuals in the
income of the association or body.

S. 86: "Share of member of an association of persons or body of individuals in the
income of the association or body.-Where the appellant is a member of an association
of persons or body of individuals (other than a company or a co-operative society or a
society registered under the Societies Registration Act, 1860 (21 of 1860) or under
any law corresponding to that Act in force in any part of India), income-tax shall not
be payable by the appellant in respect of his share in the income of the association or
body computed in the manner provided in Section 67A. [emphasis supplied]
Provided that,-

(a) where the association or body is chargeable to tax on its total income at the
maximum marginal rate or any higher rate under any of the provisions of this Act,
the share of a member computed as aforesaid shall not be included in his total
income; [emphasis supplied]

(b) in any other case, the share of a member computed as aforesaid shall form part of
his total income:

Provided further that where no income-tax is chargeable on the total income of the
association or body, the share of a member computed as aforesaid shall be chargeable
to tax as part of his total income and nothing contained in this section shall apply to
the case."

2.07 On a combined reading of the provisions of section 67A and section 86 of the Act, it shall be
observed by Your Honour that the income of an assessee who is a member of an association of
persons or a body of individuals wherein the shares of the members are determinate and known
shall be computed in accordance with the methodology provided in section 67A. However, after
making the computation of share of a member in AOP or BOI, in view of the specific provisions of
section 86, such share of income shall be excluded from the total income of the assessee. There are
only two exceptions to the applicability of the provisions of section 86 viz. (i) when the association
or body is not chargeable to tax on its total income at the maximum marginal rate or any higher
rate; and (ii) where no income-tax is chargeable on the total income of the association or body.

2.08 Your Honour, the necessary provisions, as regard to charging of tax on the total income of an
association or body at the maximum marginal rate are contained in section 167B of the Act. For a
ready reference, the relevant provisions of section 167B are reproduced, as under:

"CHAPTER XV LIABILITY IN SPECIAL CASES - FIRMS, AOPs, BOIs Charge of tax where shares of members in association of persons or body of individuals unknown, etc. Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 (1) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co- operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate: Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid[not being a case falling under sub- section (1)],-

(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.- For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.] 2.09 Your Honour, in the instant case, as per the findings given by the learned AO himself, the share of the appellant as a member of the syndicates (AOPs) was determinate and therefore, the appellant's case would not fall under the provisions of sub-section (1) to section 167B of the Act. On the other hand, the case of the appellant would fall under the provisions of sub-section (2) to section 167B of the Act. In such a situation, the entire income of the alleged syndicates, of which the appellant is allegedly claimed to be a member, would be chargeable to maximum marginal rate in accordance with clause (i) of sub-section (2) to section 167B of the Act.

2.10 Your Honour, it is thus evident that the subject syndicates being liable for charge of tax at the maximum marginal rate, the first exclusion as contemplated in clause (b) read with clause (a) of proviso to section 86 of the Act would have no application. As regard the second proviso to section 86, it is submitted that the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 income of

the syndicates are, undisputedly, chargeable to tax under section 167B of the Act and therefore, the exclusion provision from operation of section 86 would not apply in the instant case. In other words, by having a combined reading of section 167B, section 86 and section 67A, it would be observed that the alleged share of profit of the appellant in various syndicates, which in the eyes of the law are nothing but Association of Persons, would be completely entitled for exclusion of total income. However, in the instant case, the learned AO, in complete derogation of the scheme of law, has not taken such aspect into consideration and made the impugned addition.

2.11 Your Honour, in the instant case, the learned AO besides making addition on the allegation of the appellant's having derived share of profit from various syndicates, has also made addition, to the extent of the appellant's share in such syndicate, qua some alleged inadmissible expenses incurred by such syndicates. It is submitted that first of all, any disallowance for claim of any expenses can be made only in the hands of the person who claims it and not in the hands of the other persons. It is submitted that the appellant never claimed any alleged inadmissible expenses, in his audited books of account and therefore, the question of making any addition in the hands of the appellant does not arise. It is submitted that even if such disallowance was warranted then the additions ought to have been made, while making the assessment, in the hands of the syndicates only. It is submitted that after making such additions on account of disallowances of expenses, the income of the syndicates ought to have been computed in accordance with the various provisions of the Act and once such income of the syndicate was computed, for the purpose of section 67A, the resultant share of income of the appellant in the total income of the syndicates was required to be apportioned. Thus, any share of the appellant in the inadmissible expenses of the syndicates ought to have been taken as in the nature of share of profit and that was required to be added under section 67A of the Act. Needless to say, after making the addition on account of share of profit, which in its turn ought to have been inclusive of share in inadmissible expenses, the necessary relief in accordance with the provisions of section 86 ought to have been granted to the appellant which has not been so done in the instant case.

3.00 Your Honour, to the best of the knowledge of the appellant, subsequent to the framing of the assessment in the case of the appellant under section 153A of the Act, separate proceedings have been initiated by the revenue under section 153C of the Act for making assessment in the hands of syndicates. It is submitted that although the appellant has not been made a party to such assessments carried out under s. 153C of the Act but still, if the information of the appellant to this effect is found to be correct then having assessed the syndicates separately in the capacity of AOPs, now there would be no room and justification for sustaining the impugned addition in the hands of the appellant too. It is a well known maxim of the tax laws that the same income cannot be taxed twice in the hands of two different persons.

4.01 Your Honour, even if it is presumed that in the case of syndicates, the Department failed to make any assessment, then also the income, which is otherwise chargeable to tax in a different tax entity i.e. the syndicate, cannot be Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 added to the income of the appellant. It is submitted that unlike under section 3 of the Income-Tax Act, 1922, in the present Income Tax Act, 1961 there is no such discretion or option available to an assessing officer as regard to taxing of any income earned by an AOP either in the hands of AOP or

its members. Now, the assessing officer, subject to the provisions contained in ss. 67A, 86 and 167B is duty bound to make the assessment only in the hands of AOP and no addition, on the count of share of profit of a member in the AOP, can be made in the hands of such member.

4.02 Your Honour, in the similar circumstances, the Hon'ble Apex Court in the case of ITO vs. Ch. Atchiaiah (1996) 218 ITR 0239 (SC) was pleased to hold that under the present Act the right income has to be assessed in the hands of the right person. A copy of the judgment of the Apex Court is being submitted herewith for kind perusal and record of Your Honour, as Annexure A-16.00[PB Page no. 324 to 330]. For a ready reference, the relevant paras of the judgment are reproduced, as below:

"4. In our opinion, the contention urged by Dr. Gauri shanker merits acceptance. We are of the opinion that under the present Act, the ITO has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By "right person", we mean the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the AO is not precluded from taxing the right person with respect to that income. This is so irrespective of the fact which course is more beneficial to the Revenue. In our opinion, the language of the relevant provisions of the present Act is quite clear and unambiguous. Sec. 183 shows that where the Parliament intended to provide an option, it provided so expressly. Where a person is taxed wrongfully, he is no doubt entitled to be relieved of it in accordance with law but that is a different matter altogether. The person lawfully liable to be taxed can claim no immunity because the AO (ITO) has taxed the said income in the hands of another person contrary to law. We may proceed to elaborate.

5. Sec. 3 of the Indian IT Act, 1922, as amended by the Indian IT (Amendment) Act, 1939, read as follows :

"3. Charge of Income-tax.--Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, HUF, company and local authority, and of every firm and other AOP or the partners of the firm or the members of the association individually."

(Emphasis, italicised in print, supplied) The expression "person" was defined in cl. (9) of s. 2 in the following words : "9. 'Person' includes an HUF and a local authority".

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 As against the above provisions, s. 4 of the Present Act [before it was amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st

April, 1989] read thus :

"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 of this Act in respect of the total income of the previous year or previous years, as the case may be, 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."

(The amendments made by the aforesaid Amendment Act of 1987 do not make any difference so far as the present controversy is concerned.) The expression "person" is defined in cl. (31) of s. 2 in the following words : "`Person' includes--

- (i) an individual,
- (ii) an HUF,
- (iii) a company,
- (iv) a firm,
- (v) an AOP or a BOI, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses."

A comparison of the provisions of both enactments immediately bring out the difference between them. Sec. 3 of the 1922 Act provided that in respect of the total income of a firm or an AOP, the income tax shall be charged either on the firm or the AOP or on the partners of the firm or on the members of the AOP individually. It is evident that this option was to be exercised by him keeping in view of the interest of Revenue. Whichever course was more advantageous to Revenue, he was entitled to follow it. In such a situation, it was generally held that once the ITO opted for one course, the other course was barred to him. But no such option is provided to him under the present Act. Sec. 4 extracted hereinabove says that income-tax shall be charged on the total income "of every person" and the expression "person" is defined in cl. (31) of s. 2. The definition merely says that expression "person" includes inter alia a firm and an AOP or a BOI whether incorporated or not. There are no words in the present Act which empower the ITO or give him an option to tax either the AOP or its members individually or for that matter to tax the firm or its partners individually. If it is the income of the AOP in law, AOP alone has to be taxed; the members of the AOP cannot be

taxed individually in respect of the income of the AOPs. Consideration of the interest of revenue has no place in this scheme. When s. 4(1) of the present Act speaks of levy of income-tax on the total income of every person, it necessarily means the person who is liable to pay income-tax in respect of that total income according to law. The tax Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 has to be levied on that person, whether an individual, HUF, Company, Firm, AOP/BOI, a local authority or an artificial juridical person. From this, it follows that if income of A is taxed in the hands of B, A may be legitimately aggrieved but that does not mean that B is exonerated of his liability on that account. B cannot say, when he is sought to be taxed in respect of the total income which is lawfully taxable in his hands, that since the ITO has taxed very same income in the hands of A, he himself cannot be taxed with respect to the said total income. This is not only logical but is consistent with the provisions of the Act. In this connection, it may be pointed out that where the Parliament wanted to provide an option, a discretion, to the ITO, it has provided so expressly. Sec. 183 [which has since been omitted w.e.f. 1st April, 1993 by the Finance Act, 1992] provided that in the case of an unregistered firm, it is open to the ITO to treat it, and make an assessment on it, as if it were a registered firm, if such a course was more beneficial to Revenue in the sense that such a course would fetch more tax to the public exchequer. Sec. 183 read as follows :

"183. Assessment of unregistered firms.--In the case of an unregistered firm, the Assessing Officer--

(a) may determine the tax payable by the firm itself on the basis of the total income of the firm, or

(b) if, in his opinion, the aggregate amount of the tax payable by the firm if it were assessed as a registered firm and the tax payable by the partners individually if the firm were so assessed would be greater than the aggregate amount of the tax payable by the firm under cl. (a) and the tax which would be payable by the partners individually, may proceed to make the assessment under sub-s. (1) of s. 182 as if the firm were a registered firm; and, where the procedure specified in this clause is applied to any unregistered firm, the provisions of sub-ss. (2), (3) and (4) of s. 182 shall apply thereto as they apply in relation to a registered firm."

It may be mentioned that s. 183 corresponded to s. 23(5)(b) of the 1922 Act. The 1922 Act not only provided an option to the ITO in the matter of firm and AOP under s. 3 but also expressly enabled him to assess an unregistered firm as a registered firm [s. 23(5)(b)], if by doing so, more tax accrued to the State. The 1961 Act has omitted the first option, while retaining the second.

6. In this connection, it would be relevant to notice the relevant provisions of the draft Bill proposed by the Law Commission in its XIIth Report, which constitutes the basis for the 1961 Act. Clause (27) of s. 2 of the draft (definition of "person") did expressly provide an option similar to the one contained in s. 3 of the 1922 Act. Clause 27 read thus :

"(27) 'Person' includes--

(i) an individual,

(ii) an HUF,

(iii) a company,

(iv) a firm or other AOPs, whether incorporated or not, or the partners of the firm or the members of the association individually,

(v) a body of individuals, whether incorporated or not, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

(vi) a local authority, and

(vii) every artificial juridical person, not falling within sub-cl. (i) to (vi)"

[Emphasis, italicised in print, supplied] In the "Notes on Clauses" appended to the draft, the Commission stated : "27. Person. The definition of 'person' in existing s. 2(9) has been amplified.

The existing definition includes (a) HUF and (b) a local authority. The General Clauses Act, defines 'person' as including a company or AOP or BOI whether incorporated or not. The charging section (s. 3) of the IT Act enumerates the units for taxation as 'individual, HUF, company, local authority, firm and other AOPs or the partners of a firm or the members of the association individually'. Sec. 4 of the Act refers to a 'person'. It seems desirable to have a comprehensive definition of the word 'person' in the Act so as to cover all entities mentioned in--

(i) the existing definition [s. 2(9)].

(ii) the existing charging provisions [ss. 3 and 4], and

(iii) the General Clauses Act.

The definition has therefore been amplified on the above lines."

The Parliament, however, chose not to accept the suggested definition in toto; it deleted the words indicating the option. The Committee, which drafted the draft Bill comprised Sri P. Satyanarayana Rao, Sri G.N. Joshi and Sri N.A. Palkhivala, who was specifically appointed as a member for the purpose of the revision of the IT Act. [Extracts are taken from the XIIth Report of the Law Commission of India, published by Govt. of India, Ministry of Law.]

7. This question has also been troubling the High Courts in the country. As a matter of fact, Patna and Andhra Pradesh High Courts have taken different views. Be that as it may, we may mention that the Patna High Court in Mahendra Kumar Agrawalla vs. ITO 1975 CTR (Pat) 33 : (1976) 103 ITR 688 (Pat), Punjab and Haryana High Court in Rodamal Lalchand vs. CIT (1977) 109 ITR 7 (P&H), Andhra Pradesh High Court in Choudry (supra) and Delhi High Court in Punjab Cloth Stores vs. CIT 1978 CTR (Del) 257 : (1980) 121 ITR 604 (Del) have taken the view which we have taken. On the other hand, Madras High Court in CIT vs. Blue Mountain Engg. Corp'n. 1978 CTR (Mad) 142 : (1978) 112 ITR 839 (Mad) and Patna High Court in its earlier decision in CIT vs. Pure Nichitpur Colliery

Co. 1975 CTR (Pat) 83 : (1975) 101 ITR 79 (Pat) have taken the opposite view. The Andhra Pradesh High Court first expressed the other view, then in Choudry it took the view which we have taken and again in B.R. Constructions (FB) (supra) it has gone back to the other view and reiterated the view taken in the judgment under appeal. In Ramanlal Madanlal vs. CIT (1979) 116 ITR 657 (Cal), Sabyasachi Mukharji, J., speaking for a Bench of the Calcutta High Court, recognised the distinction in the language employed in s. 3 of the 1922 Act and s. 4 of the present Act but that was a case of an unregistered firm where the ITO had assessed the incomes in the hands of the partners individually. In such a situation, the learned Judge held, the ITO cannot, at the same time, bring the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 unregistered firm to tax in respect of the very same income. Sec. 183 was also referred to in that connection.

The decision of the High Courts taking the contrary view appears to have been influenced largely by the decisions of this Court in CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225 (SC) : TC 6R.197 and CIT vs. Murlidhar Jhawar & Purna Ginning & Pressing Factory (1966) 60 ITR 95 (SC) which were rendered under the 1922 Act and have not given due weight to the marked difference in the language of the relevant provisions in the two enactments."

4.03 Your Honour, in the instant case, having assessed the appellant in the capacity of member of syndicate, the revenue would still have a valid right to assess separately the syndicates which would result into making assessment of the same income in two hands which is not permissible in the eyes of the law. It is submitted that in the similar circumstances, the Hon'ble High Court of Karnataka in the case of Pr. CIT vs. Ind Sing Developers (P) Ltd. (2016) 288 CTR 0154 (Kar) relying upon the decision of Hon'ble Supreme Court of Ch. Atchiaiah held the same view. The Hon'ble High Court further held that merely because the right person could not be taxed it would not be open to the Revenue to tax a wrong person. A copy of the judgment of the Hon'ble High Court is being submitted herewith for kind perusal of Your Honour, as Annexure A-17.00 [PB Page no. 331 to 343]

4.04 The Hon'ble ITAT Delhi 'G' Special Bench, in the case of Pradeep Agencies

- Joint Venture vs. ITO (2007) 111 TTJ 0346 (SB) held that under the 1961 Act, ITO has no option to assess the members of the AOP. A copy of the said judgment is being submitted herewith for kind perusal and record of Your Honour, as Annexure A-18.00 [PB Page no. 344 to 366]

4.05 Reliance is also placed on the judgment of Hon'ble ITAT Bangalore Bench, in the case of K.S. Sathyanarayana vs. ACIT (2008) TTJ 0716. A copy of the said judgment is being submitted herewith for kind perusal and record of Your Honour, as Annexure A-19.00 [PB Page no. 367 & 376]

4.06 Reliance is also placed on the following judicial pronouncements:

i) CIT vs. Virendra Kumar Gupta (2013) 87 CCH 0010 (Del)

ii) CIT vs. Murugesha Naicker Mansion (2000) 244 ITR 0461 (Chen) 5.00 In view of the above facts and circumstances, it is submitted that the learned AO was not justified in making additions of Rs.69,98,079/- in the total income of the appellant on the allegation of appellant's having derived share of profit from various syndicates. Accordingly, the same deserve to be deleted on this count too."

8.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides.

8.2 First we would take the assessee's grounds of appeal challenging the action of the ld. CIT(A) in confirming the AO's action of holding that the assessee had formed syndicates with various persons and had derived share of profit from such syndicates. In our view, considering the voluminous tally data and as also, financial statements of the various syndicates as seized during the course of search u/s. 132 of the Act in the different premises of the liquor group, there is absolutely no infirmity in the Ld.AO's action in holding that the assessee had carried out liquor business with various other persons by forming group, under the garb of syndicates, for a definite share of profit. We find that the Ld.AO has rightly placed reliance on the statements of various members of the syndicates who have also admitted to have formed syndicates. We find that the Special Auditors appointed u/s. 142(2A) of the Act, have made a very detailed working in which they have determined various inadmissible expenses incurred by such syndicates and have also worked out the assessee's share in profit as well as in inadmissible expenditure incurred by each of the syndicates. Before us, the counsel of the assessee could not establish that the seized material relied upon by the AO was not belonging to the syndicates in which he was clearly stated to be one of the members. In these circumstances, we do not find any substance in the assessee's ground that he had not formed any syndicate. We also do not find any merit in the assessee's ground to the effect that corresponding to the quantum of share of profit of the assessee in various syndicates, as determined by the AO, no corresponding asset or expenditure was found. We find that first of all, this assertion itself is factually incorrect and contrary to the assessee's own submissions before us in respect of other grounds of appeals through which it is stated that for explaining the sources of undisclosed investment/expenditure the assessee has claimed that the source is from the share of profit from the said syndicates. Even otherwise, not finding any corresponding asset/expenditure, ipso facto, cannot be a ground for presuming that the assessee had not derived undisclosed income, especially in a circumstance when such undisclosed income is evident from ample of documentary evidences found during the course of search. Accordingly, the Ground Nos. 6(a) & 6(b) of the Assessee for A.Ys. 2010-11 & 2014-15; Ground Nos. 5(a), 5(b), 6(a) & 6(b) of the Assessee for A.Ys. 2011-12, Ground Nos. 6(a), 6(b), 7(a) & 7(b) of the Assessee for A.Ys. 2012-13, 2013-14, 2015-16 & 2016-17 have no merit and are thus dismissed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 8.3 Now, coming to the Revenue's Ground, through which they have agitated the action of the ld. CIT(A) in deleting the additions, for various assessment years, made by the AO in the assessee's income on account of undisclosed income from liquor trade business. Upon overall consideration, we find that undisputedly, the assessee had formed various Association of Persons (AOP), in form of syndicates/cartels/groups, with various other persons to carry out the business of liquor trade which is evident from the seized material/data and as also, report given by the Special Auditors. We find ourselves in agreement with the findings given by the AO that the assessee was having specified percentage of share of profit in all such syndicates. We find that the AO at para (14.7), by way of drawing a table, has given the

details of various syndicates and the assessee's share in such syndicates. Further, we find that in the same table, the Id. AO has also made a reference of the relevant seized documents. Thus, there cannot be two views that the assessee had formed the syndicates and had also derived share of profit from such syndicates. We find that while computing the income of the assessee from such syndicates, the AO at para (14.11) of her Assessment Order has taken into consideration the assessment year wise aggregate amount of share of profit/(loss) of the assessee from the syndicates and has also taken into consideration the assessee's share in inadmissible expenses found incurred by such syndicates. We find that while making the assessment year wise additions in the assessee's income, the AO has taken the sum of both the figures after giving set-off for share of loss in syndicates for each year. We are of the view that that having given a finding to the effect that the assessee had formed the syndicates and such syndicates had carried out the liquor business as separate entities there was absolutely no justification for the AO to subject the assessee in respect of profit of such syndicates which in the legal phraseology are nothing but Association of Persons/Body of Individuals.

8.3.1 We find that as per the provisions of section 86, as contained in Chapter VII of the Income-Tax Act, 1961, the entire share of an assessee in income of the Association of Persons or Body of Individuals, as computed in the manner provided in section 67A shall not be chargeable to income-tax. In our view, in the present case, the clause (a) of the first proviso to section 86 would apply, inasmuch, the syndicates are chargeable to tax at the maximum marginal rate and consequently, the share of any member in the syndicates as computed in the manner provided in section 67A shall not be included in the total income of the member i.e. the assessee in the present case.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 8.3.2 We find as per the provisions of section 67A of the Act, in computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known, after making certain adjustments share of each member is required to be computed. However, after making the computation of share of a member in AOP or BOI as per the provisions of section 67A, in view of the specific provisions of section 86, such share of income shall be excluded from the total income of the assessee. We find that there are only two exceptions to the applicability of the provisions of section 86 viz. (i) when the association or body is not chargeable to tax on its total income at the maximum marginal rate or any higher rate; and (ii) where no income-tax is chargeable on the total income of the association or body, but, for the reasons discussed hereinbelow, none of the exceptions to section 86 are applicable in the present case.

8.3.3 We further find that in the instant case, as per the findings given by the AO himself, the share of the assessee as a member of the syndicates (AOPs) was determinate and therefore, the assessee's case would not fall under the provisions of sub-section (1) to section 167B of the Act. On the other hand, the case of the assessee would fall under the provisions of sub-section (2) to section 167B of the Act. In such a situation, the entire income of the syndicates, of which the assessee was found to be a member, would be chargeable to maximum marginal rate in accordance with clause (i) of sub-section (2) to section 167B of the Act in the hands of such syndicates only.

8.3.4 We find that since all the subject syndicates are liable for charge of tax at the maximum marginal rate and therefore, the first exclusion as contemplated in clause (b) of the first proviso to the section 86 read with clause (a) of the first proviso thereof would have no application. For the second proviso to section 86, we find that the income of the syndicates are, undisputedly, chargeable to tax under section 167B of the Act and therefore, such proviso would also not apply in the instant case. In other words, by having a combined reading of section 167B, section 86 and section 67A, it can be safely concluded that the share of profit of the assessee in various syndicates, which in the eyes of the law are nothing but Association of Persons, would be completely entitled for exclusion of total income of the assessee.

8.3.5 In the light of the legal position, as enunciated hereinabove, in our considered view, income of all the syndicates, as determined by the AO, can be assessed in the hands of the respective syndicates only as these syndicates, being AOPs are classified as separate persons and tax entity u/s. 2(31) of the Act, but, in any circumstance, in the present case, any share of profit from Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 such syndicates cannot be added as income chargeable to tax in the hands of any of its members. We find that, as per the findings given by the Id. CIT(A) at para (4.7.6) which remained uncontroverted by the Revenue, even in respect of some of the syndicates, separate assessments have already been framed by the various assessing officers u/s. 144/153C r.w.s. 153A of the Act and while making assessments in the hands of such syndicates, the amount of undisclosed income earned by these syndicates, have already been determined. It is well known maxim of the law that same income cannot be taxed twice in the multiple hands unless otherwise so warranted by the specific provisions of the Act itself.

8.3.6 In the present case, we also find that the Ld.AO besides making addition on account of assessee's having derived share of profit from various syndicates, has also made addition, to the extent of the assessee's share in such syndicate, qua some alleged inadmissible expenses incurred by such syndicates. We find full substance in the assessee's contention that since none of these inadmissible expenditure was claimed by the assessee himself, and therefore, any disallowance for claim of any such expenses can only be made in the hands of the syndicates which have actually incurred such expenditure. In our view, after making such additions on account of disallowances of expenses, the income of the syndicates ought to have been computed in accordance with the various provisions of the Act and once such income of the syndicate was computed, for the purpose of section 67A, the resultant share of income of the assessee in the total income of the syndicates was required to be apportioned. Thus, any share of the assessee in the inadmissible expenses of the syndicates ought to have been taken as in the nature of share of profit and that was required to be added under section 67A of the Act, but again, after making such addition, the necessary relief in accordance with the provisions of section 86 ought to have been granted by the AO to the assessee which has not been so done in the instant case.

8.3.7 In our view, even if for any reason the Revenue failed to make any assessment in the hands of the syndicates, then also the income, which is otherwise chargeable to tax in a different tax entity i.e. the syndicate, cannot be added to the income of the assessee. We find that unlike under section 3 of the Income-Tax Act, 1922, in the present Income Tax Act, 1961 there is no such discretion or option available to an assessing officer as regard to taxing of any income earned by an AOP either in the

hands of AOP or its members. Now, the assessing officer, subject to the provisions contained in ss. 67A, 86 and 167B is statutorily bound to make the assessment only in the hands of AOP and no Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 addition, on the count of share of profit of a member in the AOP, can be made in the hands of such member. For such proposition, we rely on the decision of the the Hon'ble Apex Court in the case of ITO vs. Ch. Atchiaiah (1996) 218 ITR 0239 (SC) in which their Lordships were pleased to hold that under the present Act there is no discretion available to an AO either to assess the income in the hands of AOP or its members, but the same has to be assessed only in the hands of the AOP. The Apex Court further held that right income must be assessed in the hands of the right person. We also respectfully follow the decision of the the Hon'ble High Court of Karnataka in the case of Pr. CIT vs. Ind Sing Developers (P) Ltd. (2016) 288 CTR 0154 (Kar) in which the Lordshipsrelying upon the decision of Hon'ble Supreme Court of Ch. Atchiaiah held that merely because the right person could not be taxed it would not be open to the Revenue to tax a wrong person. We find that the similar view was expressed by the Coordinate Delhi 'G' Special Bench, in the case of Pradeep Agencies - Joint Venture vs. ITO (2007) 111 TTJ 0346 (SB) and as also, by the Bangalore Bench, in the case of K.S. Sathyanarayana vs. ACIT (2008) TTJ 0716.

8.4. In view of the above findings, we find no infirmity in the findings given by the Id. CIT(A) in deleting the entire additions made by the AO in the hands of the assessee on account of assessee's share in profit and inadmissible expenses of various syndicates, for various assessment years in the appeal. Accordingly, Ground No. 1 for A.Y. 2010-11 to A.Y. 2013-14 & A.Y. 2015-16 & Ground No. 2 for A.Y. 2016-17 raised by the Revenue, being devoid of any merit, are hereby Dismissed.

9. Ground No. 2 of the Revenue for A.Ys. 2010-11, 2011-12, 2012-13 & 2013-14 9.1 Through the Ground No. 2, common for the captioned assessment years, the revenue has challenged the action of the Id. CIT(A) in deleting the additions made by the AO on account of undisclosed interest income from capital in M/s. Mahakal Traders.

9.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the premises of the assessee, some loose papers in the form of capital account of the assessee in the books of M/s. Mahakal Traders, were seized and inventorized as LPS-3, BS-1, Page No. 12 & BS-2 Page No. 23 in IDS-04. The AO, from the subject loose papers, noted that the assessee had made capital investment in the group and on such capital, the assessee had derived interest Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 income to the tune of Rs.78,46,167/- in four different assessment years. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject loose papers but the assessee instead of making any submission sought further time to submit his response. From the seized documents, the AO came to the conclusion that the documents seized were incriminating in the nature and the same were also verified by the Special Auditors. The AO further found that some of the transactions mentioned in these documents were through bank account and therefore, the genuineness of the ledger account was established. It was further stated by the AO that the assessee had been found to have formed syndicate with others. Finally, the AO made additions for an aggregate sum of Rs.78,46,167/-, in various assessment years, in the assessee's income on account of undisclosed interest income of the assessee from capital in M/s. Mahakal Traders.

9.3 Aggrieved with the assessment order, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Id. CIT(A) observed that the interest income derived by the assessee from capital investment in Syndicate is not chargeable to tax as his personal income under section 86 r.w.s. 67A of the Act. Accordingly, the Id. CIT(A) deleted the entire additions made by the AO on this count. The Id. CIT(A) has given the relevant findings at para (4.11.1) of his order which is reproduced as under:

"4.11.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. As far as the contention of the appellant to the effect that the subject seized papers have no nexus with his financial affairs, I do not find any substance as the papers were recovered from the premises of the appellant and undisputedly, he had formed liquor syndicates. However, I find merit in the legal plea of the appellant that even if the interest income of the appellant from capital invested in such syndicates is accepted as correct, then also the same having been derived from an AOP which is separately chargeable to tax, any interest income earned from such AOP cannot be charged to tax under section 86 read with section 67A of the Act. I find that under sub-section (1) to section 67A of the Act, any interest received by a member of an AOP is considered to be the share of income of that member in the AOP and the same is not chargeable to tax in accordance with the provisions of section 86 of the Act and instead on such interest component, the AOP is required to suffer the tax. I have given my detailed findings as regard to the taxability of income of a member of AOP (Syndicate) from such AOP and has held that such income is not chargeable to tax in the hands of the members. Accordingly, the additions of Rs.46,37,632/- in A.Y. 2010-11, Rs.30,22,593/- in A.Y. 2011-12, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Rs.1,24,139/- in A.Y. 2012-13 and Rs.61,803/- in A.Y. 2013-14 made by the AO on account of interest received by the appellant in his capital investment in Syndicate are Deleted. Therefore, appeal on these ground is Allowed."

9.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us.

9.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

9.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

10.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides. We find that the seized document inventorized are in the form of ledger account of the assessee in the books of some M/s. Mahakal Traders, Dhar, Indore for the period from 01/04/2009 to 31/03/2010 and 01/04/2010 to

31/03/2011. Likewise, some other seized documents are also in the form of ledger accounts of the assessee in the books of M/s. Mahakal Traders, Indore for the period from 01/04/2010 to 31/03/2011, from 01/04/2011 to 31/03/2012 and 01/04/2012 to 31/03/2013. On a perusal of such seized documents, we find that in such seized documents, the name of the assessee has clearly been mentioned. We further find that in such capital accounts, capital account of the assessee has been credited with the amount of interest on periodical basis. We find that the subject seized papers were found from the premises of the assessee himself. We have already while adjudicating the earlier grounds that the assessee had formed syndicate with various persons by making investments. Thus, in such circumstances, the evidentiary value of the seized documents cannot be denied. Thus, we find no infirmity with the findings given by the Id. CIT(A) that the seized documents wherein the name of the assessee is clearly appearing is pertaining to the assessee only. Consequently, in our considered view, the AO has rightly given a finding that the assessee had formed the syndicates and from such syndicates, he had earned certain interest income on his capital contribution towards such syndicates.

10.2 However, in our considered view, the interest income earned by the assessee from such syndicate which is in the form of an AOP/BOI, cannot be Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 charged to tax in the hands of the assessee. We find that while dealing with the Ground No. 1 for A.Y. 2010-11 to A.Y. 2013-14 & A.Y. 2015-16 & Ground No. 2 for A.Y. 2016-17 of the Revenue, we have already discussed the legal position of law that if any AOP is chargeable to tax at the maximum marginal rate, then any income earned by any member from such AOP cannot be charged to tax in the individual hands of the member thereof. In the present case, we find that as per the AO's own findings, both the M/s. Mahakal Traders, Dhar & M/s. Mahakal Traders, Indore are AOPs which are separate taxable entities and which are chargeable to tax at the maximum marginal rate and therefore, any interest income derived by the assessee from such syndicates cannot be added to the taxable total income of the assessee. Thus, we find no infirmity in the action taken by the Id.CIT(A) in deleting the entire additions of Rs. 46,37,632/- in A.Y. 2010-11, Rs. 30,22,593/- in A.Y. 2011-12, Rs. 1,24,139/- in A.Y. 2012- 13 and Rs. 61,803/- in A.Y. 2013-14 made by the AO on this count. Accordingly, the common Ground No. 2 of the Revenue for A.Y. 2010-11, A.Y. 2011-12, A.Y. 2012-13 and A.Y. 2013-14 are hereby dismissed.

11. Ground No. 3 of the Revenue for A.Ys. 2010-11 & 2014-15; Ground No. 4 of the Revenue for A.Ys. 2011-12 & 2012-13; Ground No. 5 of the Revenue for A.Y. 2013-14; Ground No. 6 of the Revenue for A.Y. 2015-16; Ground No. 7 of the Revenue for A.Y. 2016-17 11.1 Through these Grounds for the captioned assessment years, the revenue has challenged the action of the Id. CIT(A) in deleting the additions made by the AO on account of undisclosed investment in loans and advances on the basis of jottings in seized diaries.

11.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the various premises of the assessee, some documents inventorized as BS-1 & 2, B-1 to 11, BK-1 to 3 and BK-1 & 2, were found and seized. Such documents were in the form of diaries. The AO noted that in the diaries, assessee's day to day transactions were entered. The AO further found that the in such diaries, the transactions of loans and advances given to various parties in cash were noted. The details of the transactions were

compiled by the AO and the same were enclosed as Annexure E-48 of the Assessment Order. During the course of the assessment proceedings, the AO, vide his show-cause notice, required the assessee to furnish his explanation on this issue. In reply, the assessee furnished his explanation which has also been reproduced by the AO at paras (26.1) & (26.2) on page no. 92 to 94 of the Assessment Order. However, the AO considered only a part of the reply of the assessee as Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 acceptable. The AO held that such documents contained the detail of bank transactions also and therefore, the authenticity of the seized documents are established. Finally, based upon the jottings made in the diaries and as also, working made by the Special Auditors, the AO made additions of Rs.47,40,000/- in A.Y. 2010-11, Rs.1,10,11,000/- in A.Y. 2011-12, Rs.1,12,03,000/- in A.Y. 2012-13, Rs.7,18,42,185/- in A.Y. 2013-14, Rs.2,05,82,582/- in A.Y. 2014-15, Rs.3,27,53,066/- in A.Y. 2015-16 and Rs.75,19,000/- in A.Y. 2016-17 on account of undisclosed investment of the assessee in giving loans and advances to various parties.

11.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. During the course of the appellate proceedings, before the Id. CIT(A), the assessee also furnished certain documents, as additional evidences under Rule 46A which were forwarded to the Assessing Officer for comments. The copy of the Remand Report of the AO was provided by the Id. CIT(A) to the assessee and in response, the assessee filed his rejoinder. The Ld. CIT(A), after considering the remand report of the AO as well as the rejoinder of the assessee, deleted the entire additions made by the AO on this count. The Id. CIT(A) has given the relevant findings at para (4.14.1) of his order which is reproduced as under:

"4.14.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I have also carefully examined the report of the Special Auditors, copies of the seized documents produced before me for verification, the Remand Report submitted by the AO and the rejoinder of the appellant on such remand report. After considering all, my findings on various additions made for various assessment years are as under:

- Assessment Year 2010-11 : Rs.47,40,000/-:-

The impugned addition of Rs.47,40,000/- has been made by the AO on the basis of one loose paper in the form of some ledger account of the appellant in the books of some ABC Ltd. which was found and seized from the premises of M/s. Regent Beer and Wines Ltd. Before me, the appellant has submitted that he had not given any sum of Rs.47,40,000/- to the ABC Ltd. but infact, he had received the cash of Rs.47,40,000/- from ABC Ltd. It was submitted by the appellant that the books of ABC Ltd. were considered to be that of M/s. Regent Beer and Wines Ltd. (in which the appellant was one of the directors) while making the assessment in the case of such company. The appellant further submitted that he had received the funds of Rs.47,40,000/- on different occasions, from the cashier of the company, only as an imprest and for safe custody of cash of the company.

The sources of the cash received by the appellant from the company were cash Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 withdrawals from the bank accounts of such company on the same dates. I find sufficient merit in the contention of the appellant that the cash so withdrawn by the cashier of the company from the bank account was handed over to him for its safe custody which was either returned back by the appellant or re-deposited in the bank account of the company. On a perusal of the seized ledger account on the basis of which the learned AO has made the impugned addition, it was also found that such ledger account is containing the details of the cash of Rs.47,40,000/- given by the company to the appellant. The appellant has also strongly contended that the cash so received by him was exactly the same amount of cash withdrawals from the bank account of the company, gets verified from the copies of the bank statements of the company submitted by the appellant in his Paper Book. Further, in the case of the company too, the AO has made addition of Rs.74,40,000/- in the A.Y. 2010-11 which inter alia includes the same amount of Rs.47,40,000/- so given to the appellant. The company, in its appeal bearing No. IT-10583/2018-19 for A.Y. 2010-11 has also agitated the making of such addition by the AO. The aforesaid appeal of the company for A.Y. 2010-11 has already been adjudicated vide Order dated 01.11.2019, wherein, the said addition of Rs.74,40,000/- was deleted by holding that the sources of the making cash payments to the tune of Rs.47,40,000/- by the company were out of cash withdrawals made immediately prior to making of such payments from its bank accounts. Thus, I do not find any reason to uphold the addition so made by the AO in the appellant's income. Hence, addition made by the AO amounting to Rs.47,40,000/- is Deleted. Therefore, appeal on these grounds is Allowed.

• A.Ys. 2011-12 to A.Y. 2016-17 : Rs.1,10,11,000/- in A.Y. 2011-12, Rs.1,12,03,000/- in A.Y. 2012-13, Rs.7,18,42,185/- in A.Y. 2013-14, Rs.2,05,82,582/- in A.Y. 2014-15, Rs.3,27,53,066/- in A.Y. 2015-16 and Rs.75,19,000/- in A.Y. 2016-17 The AO has made the additions in various assessment years on the allegation of undisclosed investment made by the appellant in the loans and advances given to various parties in cash. The AO has given the details of such transactions in separately financial year wise drawn annexures enclosed as Annexure E-48. These annexures are basically in the form of Group Summary of Loans and Advances (Asset), which have been extracted from the tally accounts prepared by the Special Auditors from the various seized material. The AO has made such annexures as the sole basis for making additions in the income of the appellant for various years.

As the very basis for making the addition by the AO was the abstract from tally accounts prepared by the Special Auditors, a reference was necessarily required to be made to the Report of the Special Auditors on such abstract. Upon going through the Report of the Special Auditors, it was found that in such Report, the Special Auditors have furnished the particulars of the appellant for the various years in the prescribed Form No. 6B and along with such particulars, Schedules have been enclosed. In the Schedules, I could not find any adverse comment of the auditors on the summary of loans and advances as referred to hereinabove. However, under the head 'Other Observations' forming part of Schedule-I to the main audit report in Form No. 6B, the Special Auditors have reported that on Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 verification of incriminating seized diaries, they found recording of the day to day transactions of the appellant. However, without making any adverse comment, the auditors have merely reported that such transactions need to be verified from the books of account of the appellant. The Auditors further prepared a fund flow statement along

with detailed ledger accounts of such transactions prepared from compilation of the personal diaries which have been given as per 'Sub-Schedule 5' of the Audit Report. Upon going through the Sub-schedule 5, it was observed that it is in the form of a fund flow statement, drawn for the period from 01.04.2009 to 31.03.2016 in which on the upper part, inflow of funds have been shown and in the lower part, outflow of funds have been shown. In the Sub- schedule 5, loans and advances to various persons have been shown to be at Rs.14,66,64,187/-. The party-wise details of such loans are given in the Annexure-2 enclosed to such Sub-schedule 5 of the Special Auditors' Report. In the Sub-Schedule 5, the inflow of the funds have been shown mainly coming out of the unsecured loans aggregating to a sum of Rs.75,33,47,900/- alleged to have been taken by the appellant from various persons as per the details given in the Annexure-1 to such Sub-schedule 5 and as also, a sum of Rs.6,48,80,000/- out of refund of the loans. In the Sub-schedule 5, for the period from 01.04.2009 to 31.03.2016, only an income of Rs.10,53,407/- has been shown as the source of inflow of funds. On a perusal of the various ledger accounts, as prepared by the Special Auditors in the tally system, on the basis of the personal diaries, which have also been referred to by the AO at para 26.0 of the impugned Order, the ledger accounts have been prepared on the basis of random entries made in the diaries. Further, the Special Auditors have prepared one Annexure-1 of Unsecured Loans giving the details of loans taken and repaid by the appellant during the periods under review and such annexure has also been submitted along with the Sub-schedule 5. In such Annexure-1, the name-wise details of unsecured loans allegedly taken by the appellant from the various persons for an aggregate sum of Rs.75,33,47,900/- have been shown. In the background of these facts, although, the appellant has strongly objected the authenticity and reliability of the personal diaries to be used against him as evidences, but, even if such objections are overruled, still, I find merit in one contention of the appellant that even if the working of the Special Auditors, which became the very basis for the impugned additions, are presumed to be correct, then also there being no allegation of any undisclosed income or undisclosed capital of the appellant, no addition could have been made. From the compilation of the personal diaries, it transpires that in such diaries, the very sources of making loans and advances have been shown to be out of unsecured loans taken by the appellant from various persons as per the details compiled by the Special Auditors in Annexure-1 of Sub-schedule 5. In my considered view, any seized document has to be interpreted in its entirety and a combined effect of such document is required to be taken into consideration while making the assessment. In my view, making of loans and advances can be subjected to income of an assessee only if the sources of making such loans and advances remain unexplained. However, in the instant case, from the seized diaries and compilation made on the basis of such diaries by the Special Auditors, appointed under s.142(2A) of the Act, the sources of making of loans are becoming visible and the sources are such which can be regarded only as capital receipts in the hands of the appellant and by no stretch Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of imagination, such sources can be termed to be undisclosed income of the appellant.

In the instant case, the AO has made the entire additions, for all the assessment years merely on the basis of summaries of loans and advances prepared by the Special Auditors. Such summaries, in their turn, were based upon random jottings made in some personal diaries. The AO has made additions on the allegation that the appellant had given cash loans to numerous persons in various years but not even in one single case, the AO has brought on record outcome of any independent enquiry, if any, made from any of the persons to whom it was alleged that the appellant had given

any loan or advance. During the course of search in various premises of the appellant, no evidence as regard to making of any loan by the appellant or earning of any interest thereon was found. In my view, had any loan or advance, as alleged, was given by the appellant, then, some evidence in the form of some promissory note or hundi duly signed by the borrower ought to have been found in any of the premises of the appellant which is not the case here. Further, the AO has not made any addition in the income of the appellant on the allegation of earning any interest. If the appellant had been found to have given loans and advances in crores then, it could not have been presumed that all the loans were given without any interest and therefore, there ought to have been some material on record as regard to earning of interest by the appellant on the subject loans and advances. But, it is not the case of the AO as the AO has not made any addition in income of the appellant in any of the assessment years under consideration on the allegation of undisclosed interest income of the appellant.

I found that the AO has made reliance merely on some personal diaries which were found in the possession of one of the part-time accountants of the appellant during the course of the survey carried out u/s. 133A in one of the premises of the appellant namely Mr. Navdeep Shrivastava. I also found that the AO could not rebut the contention of the appellant that these diaries were not written by him but, were written by such accountant only from whose possession these were found. I find merit in the contention of the appellant that since the diaries were not in his own handwriting and further since, there is no evidence that all the jottings made in the diaries were made by the accountant on the direction of the appellant only, the appellant could not be fastened with the liability to explain the nature of each and every jottings made in such personal diaries. I find that the appellant has rightly placed reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. S.M. Aggarwal (2007) 293 ITR 0043 (Del.) in which the Hon'ble Court has categorically held that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. I also found that the appellant could be able to demonstrate that the accountant who authored the diaries passed away during the period between the date of the search and the date of the assessments.

Further, the jottings made in the diaries, the appellant could also be able to prove that the deceased accountant was also looking after the accounting affairs of other persons and entities other than the appellant. The author of the diaries Late Mr. Navdeep Shrivastava, in his statement given u/s. 133A of the Act on Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 07.01.2016, has nowhere stated that all the jottings made in his personal diaries pertained only to the financial affairs carried out by the appellant in his individual capacity. On the contrary, I in reply to Q. No. 4, the deceased accountant stated that at the place of survey, the books of various entities including that of the appellant were maintained. Further, in reply to Q. No. 12, he admitted that the subject diaries were written by him only and he admitted that a jotting of Rs.5,00,000/- pertains to receipt of sum from some Laxmi Bhaisaab which have been given to others. In reply to Q. No. 18, it has been stated that some annexures found from the business premises were in respect of some Indore Syndicate. Also, it was found that some jottings in the diaries pertain to other concerns and entities. As an example, at page no. 82 of B-6 seized from the premises marked as UPO-02, a copy whereof has been submitted by the appellant at page no. 14 of his additional paper book marked as 'DLA', there is a mention of two cheques for amount of Rs.10,00,000/- and Rs.2,50,000/- with the narration 'JBP & DPL' and

the appellant by furnishing the bank statements, could be able to demonstrate that such jottings pertain to his sister concern namely M/s. Jai Baba Properties & Developers Pvt. Ltd. and these transactions are duly reflected in the bank statements of the above named company. The appellant before me has furnished a voluminous additional paper book, marked as 'DLA', containing his explanation on various jottings made in the said diaries along with the supporting documentary evidences. A copy of such Paper Book was also provided to the AO and his comments were called upon.

Nevertheless, neither during the course of the investigation nor at any time thereafter, the full contents of the diaries were confronted to the author of such diaries. I am of the considered view that as per the settled law, without having any corroborative evidence, merely on the basis of jottings in some diaries, no adverse presumption can be made against any assessee. In the present facts and circumstances, there could have been some suspicion that the various jottings made in the personal diaries of the deceased accountant pertained to the appellant but, there is no other corroborative evidence in support of such suspicion. The Hon'ble Supreme Court in the case of *Dhakeswari Cotton Mills Ltd. vs. CIT* (1954) 26 ITR 0775 (SC) has held that there must be something more than mere suspicion to make an assessment. In my view, solely on the basis of jottings made in some personal diaries maintained by the part-time accountant of the appellant in his own handwriting, who is no more and whose statements on the various jottings made in the diaries could not be extracted fully, no adverse inference ought to have been drawn against the appellant. This is more so in a case where the appellant could be able to establish that in the said diaries, the jottings relating to some other entities were also made. In my view, the appellant could not be expected to explain the various jottings made in the personal diaries maintained by his part-time accountant who was also looking after the financial affairs of other entities.

It is settled law that merely on the basis of notings made in the diaries, found from the possession of some third person, without having any other corroborative evidence and without making any enquiry, no addition can be made. Hon'ble Supreme Court in the case of *Central Bureau of Investigation v. V.C. Shukla and Others* (1998) 3 SCC 410 and again in the case of *Common Cause (A Registered Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Society) v. Union of India* reported in (2017) 30 ITJ 197 (SC) has held that the diaries are not books of account and thus, have no evidentiary value by themselves. Further, Hon'ble Jurisdictional High Court of Madhya Pradesh, in the case of *Pr. CIT vs. Shri Pukraj Soni* (2019) 34 ITJ 489 MP (HC) was also pleased to hold that merely on the basis of loose papers and diaries found from the possession of a third person, no addition can be made. Thus, I am of the firm opinion that without having any corroborative material on record, no addition can be made merely on the basis of diaries. Accordingly, I find no substance in the additions made in the income of the appellant on account of undisclosed investment in loans and advances and therefore, the additions of Rs.1,10,11,000/- in A.Y. 2011-12, Rs.1,12,03,000/- in A.Y. 2012-13, Rs.7,18,42,185/- in A.Y. 2013-14, Rs.2,05,82,582/- in A.Y. 2014-15, Rs.3,27,53,066/- in A.Y. 2015-16 and Rs.75,19,000/- in A.Y. 2016-17 are Deleted. Therefore, appeal on these grounds is Allowed."

11.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us.

11.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

11.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

12.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides, Remand Report of the Ld.AO, Rejoinder of the assessee and also gone through the judgments and decisions referred to and relied upon by both the sides. We find that the Ld.AO has made the subject additions vide para (26.4) at page no. 95 of her Order. In the body of the assessment order, the Ld.AO has not given any working of the party wise investment in loans and advances. We find that for arriving at the amount of addition, the AO has compiled the details through a separate annexure E-48, forming part of the assessment order. On a perusal of the Annexure E-48, we find that it comprises of ledger accounts of various parties for the period from 01/04/2009 to 31/03/2016. Further, in such annexure, financial year wise details of loans and advances given by the assessee to various persons have been given. Upon raising the query, it was contended by the counsel of the assessee that the seized documents were not in the nature of ledger accounts but, the Special Auditors submitting their Report u/s. 142(2A) of the Act, on Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the basis of the jottings made in the seized diaries had prepared the books of account of the assessee on Tally accounting system and from such Tally accounting system, the ledger accounts and the details of loans and advances, as annexed by the AO as Annexure E-48 were prepared. Such contention of the assessee was not rebutted by the CIT(DR). Even we also find that the Id. AO herself has stated at para (26.0) that the transactions noted in the diaries were compiled and further, from at para (26.3), it has been stated that such transactions were also noted by the Special Auditors. We find that the addition for A.Y. 2010-11 has been made by the AO on the basis of some other book titled as 'ABC Book' whereas, additions for all other assessment years have been made by the AO on the basis of the seized documents referred to at para (26) of the assessment order.

12.2 Now, first coming to the addition made by the AO on the basis of some 'ABC Book', we find that for such year, the party wise details of loans and advances (assets) have been given by the AO in the said annexure E-48, which contains only one debit entry of a sum of Rs. 47,40,000/- in the name of some Shri R.C. Gupta. For the detailed ledger account, the counsel of the assessee drew our attention to the page no. 19 of the Annexure E-48 in which the ledger account of Shri RC Gupta showing aggregate debit amount of Rs. 47,40,000/- is getting reflected. From the perusal of such ledger account, we find that all the debit entries made in such ledger account are in the nature of journal entries with the corresponding credit in the account of some Shri J.P. Gupta. The counsel of the assessee also drew our attention to the narrations made in such entries which clearly reveal that such entries are based upon some books titled as 'ABC Books' which were inventorized as IDS-4, LPS-1 and were not in the form of diaries which have been referred to by the AO at para 26 of her Order. It was contended by the assessee that such ABC books pertain to one group company namely Regent Beers and Wines Limited in which the assessee was one of the directors and these were not the personal diaries or books of account of the assessee himself. We find merit in the contention of

the assessee that on different occasions, the company through some Shri JP Gupta, had made withdrawals from its bank accounts and upon making the cash withdrawals from the bank, at once, the account of Shri JP Gupta was debited and further upon, Shri JP Gupta handing over the cash to the cashier of the company namely Shri RC Gupta, necessary journal entries were passed but, in the entire transactions, the assessee was not involved. In any case, such transactions were not found recorded in the diaries of the assessee. We find merit in the contention of the assessee that on every occasion viz. 14/05/2009, 01/06/2009, 17/06/2009, 18/06/2009, 30/06/2009 and 05/07/2009, the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 company M/s. Regent Beers and Wines Limited had withdrawn cash of the same amount the same dates, from their bank account maintained with State Bank of India, Scheme No. 54, Indore which is supported by the copies of the bank statements of the above named company placed on record by the assessee at page nos. 383 to 386 of the Paper Book for A.Y. 2010-11. We also find merit in the contention of the assessee that a similar addition of Rs. 47,40,000/- was also made by the same AO in the simultaneous assessment proceedings for A.Y. 2010-11 carried out in the case of M/s. Regent Beers and Wines Ltd. and therefore, there was absolutely no justification for the Id. AO to hold that such transactions were carried out by the assessee in his individual capacity. Thus, for A.Y. 2010-11, we do not find any infirmity in the Order of the Id. CIT(A) in deleting the addition of Rs. 47,40,000/- made by the AO on account of alleged investment in loans and advances by the assessee. Accordingly, the Ground No. 3 of the Revenue for A.Y. 2010-11 is hereby Dismissed.

12.3 Now, coming to the additions made by the AO for A.Y. 2011-12 to A.Y. 2016-17, in the assessee's income on the allegation of his investment in loans and advances merely on the basis of seized documents which are in the form of diaries.

12.4 We find that for making the subject additions, the AO has made reliance merely on some personal diaries which were found in the possession of one of the part-time accountants of the assessee namely Late.Mr. Navdeep Shrivastava, during the course of the survey carried out u/s. 133A in one of the premises of the assessee. We find that during the course of the aforesaid survey, statement of Late Mr. Navdeep Shrivastava was duly recorded and a copy of his statement has been placed by the assessee at page no. 272 to page no. 280 of his Paper Book filed for A.Y. 2011-12. Upon going through this statement we find that as per his statement (i) in reply to question no. 2, he had stated that he was looking after the balance sheet preparation work for the assessee and one hotel M/s. Ambrosiya; (ii) in reply to question no. 4, he had stated that besides looking after the accounting affairs of the assessee, he was also looking after the accounts feeding work of one M/s. Jai Baba Construction in which the assessee was one of the partners; (iii) in reply to question no. 12, Mr. Srivastava stated that the entire diaries were written by him only; and (iv) in reply to question no. 18, Late Shrivastava stated that all the transactions found to be made in one seized document pertains to the various syndicates. We find that in such statement, the specific queries regarding the seized diaries were not made by the survey party to Late Mr. Navdeep Shrivastava. We find Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 that Mr. Navdeep Shrivastava whose statements were recorded by the survey party on 07/01/2016 had passed away on 11/04/2017 i.e. much prior to the date of passing of the assessment orders by the AO. We find that in such circumstances, the statements of late Navdeep Shrivastava, to whom these diaries were belonging, could not be obtained at any stage. We find sufficient merit in the contention of the assessee that the

seized diaries were not in his handwriting and were also not maintained by late Navdeep Shrivastava on the instruction of the assessee. We also find that late Navdeep Shrivastava besides looking after the accounting affairs of the assessee, was also looking after the accounting affairs of the other concerns belonging to the assessee or other persons. In such circumstances, without having any other corroborative evidences, in our opinion, all the jottings made in the seized diaries cannot be attributed solely to the assessee. We find that the assessee has rightly placed reliance on the judgement of the Hon'ble Delhi High Court in the case of CIT vs. S.M. Aggarwal (2007) 293 ITR 0043 (Del.) in which the Hon'ble Court has categorically held that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof.

12.5 We find that neither during the course of the investigation nor at any time thereafter, the full contents of the diaries were confronted to the author of such diaries. We are of the considered view that as per the settled law, without having any corroborative evidence, merely on the basis of jottings in some diaries, no adverse presumption can be made against any assessee. In the present facts and circumstances, there could have been some suspicion that the various jottings made in the personal diaries of the deceased accountant pertained to the assessee but, there is no other corroborative evidence in support of such suspicion. The Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 0775 (SC) has held that there must be something more than mere suspicion to make an assessment. In our view, solely on the basis of jottings made in some personal diaries maintained by the part-time accountant of the assessee in his own handwriting, who is no more and whose statements on the various jottings made in the diaries could not be extracted fully, no adverse inference ought to have been drawn against the assessee. This is more so in a case where the assessee could be able to establish that in the said diaries, the jottings relating to some other entities were also made. In our considered view, the assessee could not be expected to explain the various jottings made in the personal diaries maintained by his part-time accountant who was also looking after the financial affairs of other entities.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 12.6 We are conscious of the settled law that merely on the basis of notings made in the diaries, found from the possession of some third person, without having any other corroborative evidence and without making any enquiry, no addition can be made. Hon'ble Supreme Court in the case of Central Bureau of Investigation v. V.C. Shukla and Others (1998) 3 SCC 410 and again in the case of Common Cause (A Registered Society) v. Union of India reported in (2017) 30 ITJ 197 (SC) has held that the diaries are not books of account and thus, have no evidentiary value by themselves. Further, Hon'ble Jurisdictional High Court of Madhya Pradesh, in the case of Pr. CIT vs. Shri Pukhraj Soni (2019) 34 ITJ 489 MP (HC) was also pleased to hold that merely on the basis of loose papers and diaries found from the possession of a third person, no addition can be made.

12.7 We find substance in the contention of the assessee that (i) the annexure, marked as E-48 by the AO, based upon which the additions were proposed, were not prepared by the assessee, but, these were prepared by the special auditors, without seeking explanation of the assessee; (ii) the subject loose papers and diaries were not found from the possession and control of the assessee; (iii) the workings made by the special auditors were not authentic and correct; (iv) in the said diary many jottings pertain to the transactions carried out by other family members of the assessee or by

the group concerns;

(v) in the diary, there are many jottings which are not in the nature of loans and advances, but merely, in the nature of amount given to an employee as imprest on a particular day and refund thereof, by the employee on the subsequent dates; (vi) some of the jottings pertain to transactions carried out by the assessee or his group concerns through banking channels; and (vii) some of the jottings pertain to the transactions carried out by the assessee in his regular business which were duly recorded in the audited books of account. We find that in respect of additions made for the various assessment years on the basis of jottings made in the seized diaries, the assessee has furnished the complete details in the form a statement in his Paper Books, separately filed for each of the assessment years, and in such statement the assessee has furnished the full details such as S. No., Name of the Person to whom the jotting relates, Date of the jotting, amount of the jotting, relevant seized LPS/BS No., Assessee's Explanation, Reference of the documentary evidences furnished in support of the explanation etc. 12.8 We find that in the instant case, the AO has made additions on the allegation that the assessee had given cash loans to numerous persons in various years but not even in one single case, the AO has brought on record Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 outcome of any independent enquiry, if any, made from any of the persons to whom it was alleged that the assessee had given any loan or advance. During the course of search in various premises of the assessee, no evidence as regard to making of any loan by the assessee or earning of any interest thereon was found. In our view, had any loan or advance, as alleged, was given by the assessee, then, some evidence in the form of some promissory note or hundi duly signed by the borrower ought to have been found in any of the premises of the assessee which is not the case here. Further, we find that the AO has not made any addition in the income of the assessee on the allegation of earning any interest. If the assessee had been found to have given loans and advances in crores then, it could not have been presumed that all the loans were given without any interest and therefore, there ought to have been some material on record as regard to earning of interest by the assessee on the subject loans and advances. But, it is not the case of the AO as the AO has not made any addition in income of the assessee in any of the assessment years under consideration on the allegation of undisclosed interest income of the assessee.

12.9 We have carefully perused the Xerox copies of the relevant abstracts of the diaries which have been furnished by the assessee through a separate Paper Book marked as 'Diaries-Loans & Advances (DLA)'. We find that in such diaries, random jottings have been made on both the sides of the diaries. However, in such diaries, there is no mention of opening cash balance or closing cash balance. We find that in the above referred Paper Book, at the first page, the assessee has submitted one statement giving the details of assessment year wise additions made by the AO on account of undisclosed loans and advances. We find that in such statement, the assessee has made a detailed analysis of the jottings made in the diaries bifurcating the same into various sections such as (i) duly recorded transactions; (ii) in-house transactions not involving any third party; (iii) immovable property transactions; (iv) transactions relating to the associate concerns carried out by them either through banking channels or otherwise; and finally (v) the jottings not relating to the assessee or any of his family members or associates. We further find that for each of the assessment years under consideration, the assessee has furnished his explanation in respect of each and every jotting of the said diaries which have been presumed by the AO in the nature of assessee's investment in loans and

advances. We further find that in support of explanation, the assessee has furnished the necessary documents such as copies of his own bank statements, copies of bank statements of his associate concerns, copies of letters of confirmations given by third parties, copies of undertakings etc. We find that the explanation given by the assessee through Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 such statements and as also, documentary evidences filed in support thereof, have not been rebutted by the Id. CIT(DR). Thus, even on merits of the case, we find no infirmity in the action of the Id. CIT(A) in deleting the additions for A.Y. 2011-12 to A.Y. 2016-17 made by the AO on account of assessee's unexplained investment in giving loans and advances.

12.10 We also find merit in the alternate plea of the counsel of the assessee that even if for the sake of presumption, it is presumed that the seized diaries and other documents solely pertain to the assessee only and contain the unrecorded transactions of loans and advances given by the assessee, then also, in view of the peculiar circumstances of the case, no addition was warranted in the hands of the assessee. We find that the AO while making the addition for various assessment years, has given the details of loans and advances separately for each of the financial years, in an Annexure E-48 as referred to hereinabove. These annexures are basically in the form of Group Summary of Loans and Advances (Asset), which have been extracted from the tally accounts prepared by the Special Auditors from the various seized material. We find that the AO has made such annexures as the sole basis for making additions in the income of the assessee for various years. As the very basis for making the addition by the AO was the abstract from tally accounts prepared by the Special Auditors, a reference was necessarily required to be made to the Report of the Special Auditors on such abstract. Upon going through the Report of the Special Auditors, a copy whereof has been filed before us, we observed that in such Report, the Special Auditors have furnished the particulars of the assessee for the various years in the prescribed Form No. 6B and along with such particulars, Schedules have been enclosed. In the Schedules, we could not find any adverse comment of the auditors on the summary of loans and advances as referred to hereinabove. However, under the head 'Other Observations' forming part of Schedule-I to the main audit report in Form No. 6B, the Special Auditors have reported that on verification of incriminating seized diaries, they found recording of the day to day transactions of the assessee. However, without making any adverse comment, the auditors have merely reported that such transactions need to be verified from the books of account of the assessee. The Auditors further prepared a fund flow statement along with detailed ledger accounts of such transactions prepared from compilation of the personal diaries which have been given as per 'Sub-Schedule 5' of the Audit Report. Upon going through the Sub-schedule 5, a copy whereof has also been filed by the assessee in his Paper Book for A.Y. 2011-12 at page no. 253, it has been observed that it is in the form of a fund flow statement, drawn for the period from 01/04/2009 to Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 31/03/2016 in which on the upper part, inflow of funds have been shown and in the lower part, outflow of funds have been shown. In the above said Sub- schedule 5, loans and advances to various persons have been shown to be at Rs.14,66,64,187/-. The party-wise details of such loans are given in the Annexure-2 enclosed to such Sub-schedule 5 of the Special Auditors' Report, a copy whereof has been placed at page no. 256 & 257 of the assessee's Paper Book for A.Y. 2011-12. From the Sub-Schedule 5, as drawn by the Special Auditors, we find that for the period from 01/04/2009 to 31/03/2016, the inflow of the funds in the hands of the assessee have been shown mainly coming out of the unsecured loans aggregating to a sum of Rs.75,33,47,900/- alleged to have been taken by

the assessee from various persons as per the details given in the Annexure-1 to such Sub-schedule 5, a copy whereof is placed at page no. 254 of the assessee's Paper Book for A.Y. 2011-12. Further, from the Sub-Schedule 5 (PB 253), a sum of Rs.6,48,80,000/- has been shown as inflow out of refund of the loans given earlier. We further note from the said Sub-Schedule 5 that for the period from 01/04/2009 to 31/03/2016, for making various investments by way of loans, fixed assets etc., only an income of Rs.10,53,407/- has been shown as the source of inflow of funds. We find that in the above referred Annexure-1 to Sub-Schedule 5 of unsecured loans, the Special Auditors have furnished name-wise details of unsecured loans allegedly taken by the assessee from the various persons for an aggregate sum of Rs.75,33,47,900/-. In the background of these facts, we find merit in the contention of the assessee that even if the working of the Special Auditors, which became the very basis for the impugned additions, are presumed to be correct, then also there being no allegation of any undisclosed income or undisclosed capital of the assessee, no addition could have been made. From the compilation of the personal diaries, it transpires that in such diaries, the very sources of making loans and advances to various persons have been shown to be out of unsecured loans taken by the assessee from some other persons as per the details compiled by the Special Auditors in Annexure-1 of Sub-schedule 5. In our considered view, any seized document has to be interpreted in its entirety and a combined full effect of such document is required to be taken into consideration while making the assessment. In our view, making of loans and advances can be subjected to income of an assessee only if the sources of making such loans and advances remain unexplained. However, in the instant case, from the seized diaries and compilation made on the basis of such diaries by the Special Auditors, appointed under s.142(2A) of the Act, the sources of making of loans are becoming visible and the sources are such which can be regarded only as capital receipts in the hands of the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 assessee and by no stretch of imagination, such sources can be termed to be undisclosed income of the assessee.

12.11 Accordingly, in the light of the findings given hereinabove, we find no infirmity in the action of the Id. CIT(A) deleting the additions amounting to Rs.1,10,11,000/- in A.Y. 2011-12, Rs.1,12,03,000/- in A.Y. 2012-13, Rs.7,18,42,185/- in A.Y. 2013-14, Rs.2,05,82,582/- in A.Y. 2014-15, Rs.3,27,53,066/- in A.Y. 2015-16 and Rs.75,19,000/- in A.Y. 2016-17. Resultantly, the Ground No. 3 of the Revenue for A.Y 2014-15, Ground No. 4 of the Revenue for A.Ys. 2011-12 & 2012-13; Ground No. 5 of the Revenue for A.Y. 2013-14; Ground No. 6 of the Revenue for A.Y. 2015-16; Ground No. 7 of the Revenue for A.Y. 2016-17 are hereby Dismissed.

13. Ground No. 3 of the Revenue for A.Y. 2011-12, A.Y. 2012-13, A.Y. 2013-14, A.Y. 2015-16; Ground No. 2 of the Revenue for A.Y. 2014-15 and; Ground No. 5 of the Revenue for A.Y. 2016-17 13.1 Through these grounds for various assessment years, the Revenue has challenged the action of the Id. CIT(A) in deleting the additions made by the AO on account of undisclosed investment in purchase of immovable properties on the basis of jottings in seized diaries.

13.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the various premises of the assessee, some documents inventorized as BS-1 & 2, BK-1&3, BK-1&2 and Q-8, were found and seized and further, during the course of the survey proceedings in the premises of M/s. Hotel Ambrosiya,

certain documents inventorized as B-1 to 11 were found and impounded. Such documents were in the form of diaries. The AO noted that in the diaries, assessee's day to day transactions were entered. The AO further found that the transactions of cash payments for purchase of lands from various parties were noted in the diaries. The details of the transactions were compiled by the AO and the same were enclosed as Annexure E-35 of the Assessment Order. During the course of the assessment proceedings, the AO, vide her show-cause notice, required the assessee to furnish his explanation on this issue. In reply, the assessee furnished his explanation which has also been reproduced by the AO at para (18.1) on page no. 72 & 73 of the Order. However, the AO held that such documents contained the detail of bank transactions also and therefore, the authenticity of the seized documents is getting established. Finally, the AO made additions of Rs.42,99,000/- in A.Y. 2011-12, Rs.30,07,050/- in A.Y. 2012-13, Rs.4,07,01,630/- in A.Y. 2013-14, Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Rs.2,49,47,481/- in A.Y. 2014-15, Rs.1,70,76,800/- in A.Y. 2015-16 and Rs.44,00,000/- in A.Y. 2016-17 on account of undisclosed investment of the assessee in immovable properties on the basis of jottings made in diaries.

13.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences which were also furnished by him before the AO. During the course of the appellate proceedings, before the Id. CIT(A), the assessee also furnished certain documents, as additional evidences under Rule 46A which were forwarded to the Assessing Officer for comments. The copy of the Remand Report of the AO was provided by the Id. CIT(A) to the assessee and in response, the assessee filed his rejoinder. The Id. CIT(A), after considering the remand report of the AO as well as the rejoinder of the assessee, deleted the entire additions made by the AO on this count. The relevant findings of the Id. CIT(A) are being reproduced as under:

"4.15.1 During the course of the appellate proceedings, the appellant furnished some additional evidences for A.Y. 2011-12 to A.Y. 2016-17. A copy of such additional evidences along with the appellant's written submission were forwarded to the AO by this Office letter dated 24.07.2019. The AO, in reply, submitted remand report vide letter dated 16.03.2020. The AO, in his Remand Report, objected acceptance of the additional evidences filed during the course of the appellate proceedings on the pretext that sufficient opportunity of being heard was afforded to the appellant. The AO has also given specific comments on various additions made on the basis of the diaries. The AO has controverted the written submission of the appellant and has stressed upon that the additions were rightly made by him. A copy of the remand report of the AO was provided to the appellant for his counter comments. The appellant, in his rejoinder dated 25.06.2020, submitted that he was not afforded sufficient opportunity of being heard and therefore, the additional evidences deserve to be admitted. The appellant has also made counter comments and has made a rebuttal of the various observations and comments given by the AO in his remand report.

4.15.2 During the course of the appellate proceedings, the appellant also furnished his supplementary submission on the subject issue. The appellant also furnished a copy of the Special Auditors' Report along with such submission which is carefully perused and placed on record. The sum and substance of the appellant's submission before me is that the diaries which have been made the sole basis for making impugned additions by the appellant were not written by him and further, these were not written even on his instructions. It was contended that in the said diaries, many of the jottings do not pertain to him and may either pertain to some other sister concerns of the appellant or to third persons whose affairs were also being looked after by the author of the diaries namely Shri Navdeep Shrivastava who has passed away. Thus, prima facie, the appellant has denied the reliability of jottings made in such diaries for making Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 assessment in his case. On merits, the appellant made attempt that the necessary entries in respect of those jottings which pertains to acquisition of immovable properties by the appellant are duly recorded in his regular books of account and the sources of payments represented by such jottings are fully explained. In support of such assertion, the appellant furnished copies of the relevant bank statements, copies of the registered purchase deeds and as also copies of the audited financial statements. The appellant also contended that some of the properties were purchased by the concerns in which he or his family members were directors/ partners and further contended that such sister concerns had duly accounted for the investments jotted down in the diaries. In support of such contention, the appellant furnished copies of the purchase deeds executed in favour of the sister concerns, their financial statements and bank statements. The appellant also pointed out some clerical errors committed by the AO while drawing the statement of undisclosed investment in properties. The appellant contended that some of the jottings made in the said diaries were not at all belonging to him or his family members or sister concerns. Finally, the counsel of the appellant also took an alternate plea that if the seized diaries are made the sole basis for assumption of undisclosed investment in various properties by the appellant in various years then, such diaries should be read in the wholistic manner and accordingly, as per the Fund Flow Statement, in Sub-schedule 5 of the Special Auditors Report, the only conclusion which can be drawn is that such alleged undisclosed investments were made by the appellant out of the funds emanating from taking of unsecured loans.

4.15.3 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I have also carefully examined the report of the Special Auditors, copies of the seized documents produced before me for verification, the Remand Report submitted by the AO and the rejoinder of the appellant on such remand report. The AO has made the additions in various assessment years on the allegation of undisclosed investment made by the appellant in purchase of immovable properties in cash. The AO has given the details of such transactions in separately financial year wise drawn annexures enclosed as Annexure E-35. Factually, such annexures are divided into two parts viz. Annexure E-35(1) and Annexure E-35(2). It appears that such annexures have been taken by the AO from the Report submitted by the Special Auditors. The Special Auditors, in the Annexure E-35(1), have prepared financial year-wise group summary of Fixed Assets pertaining to A.Y. 2011-12 to A.Y. 2016-17 and on the basis of such working, the AO has made additions in the income of the appellant for various assessment years under the head 'Undisclosed Investment'. Along with the Annexure E-35(1), the Special Auditors have also furnished the copies of the ledger accounts of various fixed assets, for various years, stated to have

been drawn on the basis of diaries seized during the course of the search.

4.15.4 As the very basis for making the addition by the AO was the abstract from tally accounts prepared by the Special Auditors, a reference was necessarily required to be made to the Report of the Special Auditors on such abstract. Upon going through the Report of the Special Auditors, it was found that in such Report, the Special Auditors have furnished the particulars of the appellant for the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 various years in the prescribed Form No. 6B and along with such particulars, Schedules have been enclosed. In the Schedules, I could not find any adverse comment of the auditors on the issue of unexplained investment in immovable properties as referred to hereinabove. However, under the head 'Immovable Properties' forming part of Schedule-I to the main audit report in Form No. 6B, the Special Auditors have reported that the appellant had entered into various transactions in respect of various immovable properties and further reported that in absence of books of account made available to him, these property transactions could not be verified from the books of account. Thus, the Special Auditors had left open the issue of investment in immovable properties for verification by the AO but, the AO without giving any specific finding, has placed complete reliance on the Annexure E-35(1) drawn by the Special Auditors and made the impugned additions.

4.15.5 Further, the Special Auditors has prepared a fund flow statement along with detailed ledger accounts of such transactions prepared from compilation of the personal diaries which have been given as per 'Sub-Schedule 5' of the Audit Report. Upon going through the Sub-schedule 5, it was found that it is in the form of a fund flow statement, drawn for the period from 01.04.2009 to 31.03.2016 in which on the upper part, inflow of funds have been shown and in the lower part, outflow of funds have been shown. In the Sub-schedule 5, investment in fixed assets have been shown to be at Rs.8,44,88,961/-. The details of such fixed assets have been given in the sub-schedule itself. In the Sub- Schedule 5, the inflow of the funds have been shown mainly coming out of the unsecured loans aggregating to a sum of Rs.75,33,47,900/- alleged to have been taken by the appellant from various persons as per the details given in the Annexure-1 to such Sub-schedule 5 and as also, a sum of Rs.6,48,80,000/- out of refund of the loans. In the Sub-schedule 5, for the period from 01.04.2009 to 31.03.2016, only an income of Rs.10,53,407/- has been shown as the source of inflow of funds. On a perusal of the various ledger accounts, as prepared by the Special Auditors in the tally system, on the basis of the personal diaries, which have also been referred to by the AO at para 18.0 of the impugned Order, it was observed that such ledger accounts have been prepared on the basis of random entries made in the diaries. The Special Auditors have prepared one Annexure-1 of Unsecured Loans giving the details of loans taken and repaid by the appellant during the periods under review and such annexure has also been submitted along with the Sub-schedule 5. In such Annexure-1, the name-wise details of unsecured loans allegedly taken by the appellant from the various persons for an aggregate sum of Rs.75,33,47,900/- have been shown. In the background of these facts, although, the appellant has strongly objected the authenticity and reliability of the personal diaries to be used against him as evidences, but, even if such objections are overruled, still, I find merit in one contention of the appellant that even if the working of the Special Auditors, which became the very basis for the impugned additions, are presumed to be correct, then also there being no allegation of any undisclosed income or undisclosed capital of the appellant, no addition could have been made. From the compilation of the personal diaries, it transpires that in

such diaries, the very sources of making alleged investments have been shown to be out of unsecured loans taken by the appellant from various persons as per the details compiled by the Special Auditors in Annexure-1 Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of Sub-schedule 5. In my considered view, any seized document has to be interpreted in its entirety and a combined effect of such document is required to be taken into consideration while making the assessment. In my view, making of investments can be subjected to income of an assessee only if the sources of making such investments remain unexplained. However, in the instant case, from the seized diaries and compilation made on the basis of such diaries by the Special Auditors, appointed under s.142(2A) of the Act, the sources of making of investments in fixed assets are becoming visible and the sources are such which can be regarded only as capital receipts in the hands of the appellant and by no stretch of imagination, such sources can be termed to be undisclosed income of the appellant.

4.15.6 In the instant case, the AO has made the entire additions, for all the assessment years merely on the basis of summaries of fixed assets prepared by the Special Auditors. Such summaries, in their turn, were based upon random jottings made in some personal diaries. The AO has made additions on the allegation that the appellant had made cash payments for purchase of lands from various parties in various years but not even in one single case, the AO has brought on record outcome of any independent enquiry, if any, made from any of the sellers or any other persons to whom it was alleged that the appellant had made the cash payments towards purchase of lands. During the course of search in various premises of the appellant, barring one sale agreement, no other incriminating document was found from which it could have been inferred that the appellant made payment of any on-money for purchase of any immovable property over and above the same recorded in his regular books of account. I find that in the entire body of the assessment order, except the subject diaries, the AO has not made reference of any incriminating sale agreement or sale deed or any other evidence, from which it could have been inferred that the appellant made any payment towards purchase of any land out of his undisclosed income.

4.15.7 The AO at para (28.0) to (28.3), has separately dealt with the issue of transactions of immovable properties found to have been carried out by the appellant during the assessment years under consideration. The AO, on the basis of various seized documents found during the course of the search, has drawn a table running into 4 pages containing the details of various properties, such as the description of the seized document, financial year, date, nature of the document, property details, area, name of the purchaser, name of the seller, fair market value, sale consideration and registry expenses. Further, the AO, in his findings given at para (28.2) of the impugned Order, could find three discrepancies only. Accordingly, in respect of the property transactions found to have been carried out by the appellant during the periods under assessment, addition of Rs.2,35,00,000/- was made for A.Y. 2011-12 and addition of Rs.10,00,000/- was made for A.Y. 2013-14. Against such additions, the appellant has taken separate grounds of appeal which have been adjudicated separately in the ensuing paras. In nutshell, wherever the AO found any discrepancy in the actual consideration paid by the appellant and that recorded in the books and as also, wherever the AO found that the appellant could not explain the sources of purchase of land, he has made separate additions vide para (28.3) of the impugned order. It is thus evident that the additions covered by Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the present

grounds of appeal are not based upon any other material than the compilation of data made by the Special Auditors on the basis of seized diaries.

4.15.8 Thereafter, the AO, in his remand report, could not controvert the various documentary evidences submitted by the appellant in support of his contention that the investments in immovable properties were either not made by him but, by his sister concerns or if the investments were actually so made, the same were duly recorded in his regular books of account. The AO has made reliance solely on the personal diaries which were found in the possession of one of the part-time accountants of the appellant during the course of the survey carried out u/s. 133A in one of the premises of the appellant namely Mr. Navdeep Shrivastava. In respect of such diaries, while adjudicating the ground nos. 12(a) & 12(b) for A.Y. 2011-12, ground nos. 10(a) & 10(b) for A.Y. 2012-13 & A.Y. 2016-17, ground nos. 11(a) & 11(b) for A.Y. 2013-14 & A.Y. 2015-16 and ground nos. 9(a) & 9(b) for A.Y. 2014-15, I have already given my findings that (i) these diaries were in the handwriting of some Mr. Navdeep Shrivastava who is no more; (ii) the appellant has demonstrated that all the jottings made in these diaries were not pertaining to his own financial affairs but, some jottings were either relating to the sister concerns of the appellant or some other persons; (iii) the full explanation on the said diaries could not be obtained from the author of the diaries; (iv) in absence of any other corroborative evidence and without making any independent enquiry, merely on the basis of jottings made in the diaries, no adverse inference ought to have been drawn against the appellant. Since, in respect of the present grounds too, the sole basis of making the additions remained the diaries, my detailed findings given in earlier paras would be squarely applicable to the present grounds of appeals. In my considered view, since in respect of the investment in immovable properties, the AO on the basis of examination of each and every case of purchase of property by the appellant, has made separate addition at para (28.3) of the impugned assessment order and therefore, merely on the basis of jottings made in the diaries, which cannot be considered to be books of account and for that matter, the sole evidence for reaching to any conclusion, the entire additions made by the AO at para (18.3) of the impugned assessment order are liable to be deleted. Accordingly, the additions of Rs.42,99,000/- in A.Y. 2011-12, Rs.30,07,050/- in A.Y. 2012-13, Rs.4,07,01,630/- in A.Y. 2013-14, Rs.2,49,47,481/- in A.Y. 2014-15, Rs.1,70,76,800/- in A.Y. 2015-16 and Rs.44,00,000/- in A.Y. 2016-17 on account of undisclosed investment in immovable properties are Deleted. Therefore, appeal on these grounds is Allowed."

13.4 Aggrieved with the relief granted by the ld. CIT(A), the revenue is in appeal before us.

13.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

13.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the ld. CIT(A), copies whereof have been filed before us Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 in the Paper Books for the respective assessment years, and has also filed short hand notes before this Bench.

13.7 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors

Report, written and oral submissions made from both the sides, Remand Report of the AO, Rejoinder of the assessee and also gone through the judgments and decisions referred to and relied upon by both the sides. We find that the AO has made the subject additions vide para (18.3) at page no. 75 of her Order. In the body of the assessment order, the AO has not given any working of the alleged undisclosed investment in immovable properties. We find that for arriving at the amount of addition, the Ld.AO has compiled the details through a separate annexure E-35, forming part of the assessment order. On a perusal of the Annexure E-35 (2), we find that it comprises of ledger accounts of various immovable properties for the period from 01/04/2009 to 31/03/2016. Further, in such annexure, financial year wise details of fixed assets have also been given. Upon raising the query, it was contended by the counsel of the assessee that the seized documents were not in the nature of ledger accounts but, the Special Auditors submitting their Report u/s. 142(2A) of the Act, on the basis of the jottings made in the seized diaries had prepared the books of account of the assessee on Tally accounting system and from such Tally accounting system, the ledger accounts and the details of the fixed assets, as annexed by the AO as Annexure E-35 were prepared. Such contention of the assessee was not rebutted by the CIT(DR). Even we also find that the Ld. AO herself has stated at para (18.2) that the ledger accounts are prepared on the basis of diaries in which day to day transactions of the assessee are recorded.

13.8 Now, after taking into consideration all the facts and circumstances of the assessee's case, as discussed in the ensuing paras, and as also in the light of the various documentary evidences and written submissions placed on record, we are inclined to hold that no addition was warranted, for different assessment years, in the assessee's income on the allegation of his investment in immovable properties merely on the basis of seized documents which are in the form of diaries, without having any corroborative evidence and without conducting any inquiry.

13.9 We find that on the base of the same seized documents, similar addition were also made by the AO in the income of the assessee for various assessment years, alleging that the assessee had made investment in giving loans and advances to various persons. We find that such additions were deleted by the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Ld. CIT(A) and therefore, the Revenue has taken separate grounds against such deletion of the addition, which has already been adjudicated by us by giving our findings in the preceding paras. While adjudicating the Ground on account of loans and advances, as aforesaid, we have already held that merely on the basis of jottings made in diaries, which are not in the nature of books of accounts, found from the possession and control of a third person, without having any other corroborative evidence and without making any inquiry, no addition was warranted. Since, for the issue in hand, the Ld.AO has relied upon the same diaries and documents, we have no hesitation to hold once again that merely on the basis of jottings made in the diaries, the subject additions made by the AO for various assessment years on account of undisclosed investment of the assessee in purchase of land and other properties is not legally justified.

13.10 We also find substance in the contention of the assessee that (i) the annexure, marked as E-35 by the AO, based upon which the additions were proposed, were not prepared by the assessee, but, these were prepared by the special auditors, without seeking explanation of the assessee; (ii) the subject loose papers and diaries were not found from the possession and control of the assessee; (iii)

the workings made by the special auditors were not authentic and correct; (iv) in the said diary many jottings pertain to the transactions carried out by other family members of the assessee or by the group concerns;

(v) in the diary, there are many jottings which are not in the nature of investment in fixed assets; (vi) some of the jottings pertain to transactions carried out by the assessee or his group concerns through banking channels; and (vii) some of the jottings pertain to the transactions carried out by the assessee which were duly recorded in the audited books of account. We find that in respect of additions made for the various assessment years on the basis of jottings made in the seized diaries, the assessee has furnished his detailed explanation on each and every item of the addition, in his written submission made before the Id. CIT(A) for each of the assessment years. We find that copies of the written submissions have been filed by the assessee before us in his Paper Books, separately filed for each of the assessment years. We find that the assessment year wise explanation of the assessee in respect of various additions have been reproduced by the Id. CIT(A) vide para (4.15) of his Order running from page no. 271 to 392. Before us, the counsel of the assessee has relied upon his submission made before the Id. CIT(A) on the subject issue. We further find that the explanation given by the assessee on each and every addition has not been rebutted by the Id. CIT(DR). Thus, even on merits of the case, we find no infirmity in the action of the Id. CIT(A) in deleting the additions Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 for A.Y. 2011-12 to A.Y. 2016-17 made by the AO on account of assessee's unexplained investment in land and other immovable properties.

13.11 We find that in the instant case, the AO has made additions on the allegation that the assessee had made unaccounted investments in various immovable properties, but, we find that during the course of the search in the various premises of the assessee, except finding one incriminating document for which the AO has made separate addition, no other tangible material in the form of agreement or any receipt was found. We also find that before making the addition on account of assessee's investment in immovable properties, the AO has not made any inquiry from the sellers of the properties.

13.12 We also find that the AO at para (28.0) to (28.3) of her Order, has separately dealt with the issue of transactions of immovable properties found to have been carried out by the assessee during the assessment years under consideration. The AO, on the basis of various seized documents found during the course of the search, has drawn a table running into 4 pages containing the details of various properties, such as the description of the seized document, financial year, date, nature of the document, property details, area, name of the purchaser, name of the seller, fair market value, sale consideration and registry expenses. Further, the AO, in her findings given at para (28.2) of the Order, could find three discrepancies only. Accordingly, in respect of the property transactions found to have been carried out by the assessee during the periods under assessment, addition of Rs.2,35,00,000/- was made for A.Y. 2011-12 and addition of Rs.10,00,000/- was made for A.Y. 2013-14. Against such additions, the assessee had taken separate grounds of appeal before the Id. CIT(A) who has deleted such additions too and against the action of the Id. CIT(A) in deleting the aforesaid additions of Rs. 2,35,00,000/- and Rs. 10,00,000/-, we find that the Revenue has raised the separate grounds before us in their Appeals for respective assessment years, which are being

adjudicated in the subsequent paras. In nutshell, wherever the AO found any discrepancy in the actual consideration paid by the assessee and that recorded in the books and as also, wherever the AO found that the assessee could not explain the sources of purchase of land, he has made separate additions vide para (28.3) of the order. It is thus evident that the additions covered by the present grounds of appeal are not based upon any other material than the compilation of data made by the Special Auditors on the basis of seized diaries.

13.13 We also find merit in the alternate plea of the counsel of the assessee that even if for the sake of presumption, it is presumed that the seized diaries and other documents solely pertain to the assessee only and contain the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 unrecorded transactions of investment in immovable properties made by the assessee, then also, in view of the peculiar circumstances of the case, no addition was warranted in the hands of the assessee. We find that the AO while making the addition for various assessment years, has given the details of fixed assets separately for each of the financial years, in an Annexure E-35 as referred to hereinabove. These annexures are basically in the form of Group Summary of Fixed Assets, which have been extracted from the tally accounts prepared by the Special Auditors from the various seized material. We find that the AO has made such annexures as the sole basis for making additions in the income of the assessee for various years. As the very basis for making the addition by the AO was the abstract from tally accounts prepared by the Special Auditors, a reference was necessarily required to be made to the Report of the Special Auditors on such abstract. Upon going through the Report of the Special Auditors, a copy whereof has been filed before us, we observed that in such Report, the Special Auditors have furnished the particulars of the assessee for the various years in the prescribed Form No. 6B and along with such particulars, Schedules have been enclosed. In the Schedules, we could not find any adverse comment of the auditors on the summary of fixed assets as referred to hereinabove. The Special Auditors further prepared a fund flow statement along with detailed ledger accounts of such transactions prepared from compilation of the personal diaries which have been given as per 'Sub- Schedule 5' of the Audit Report. Upon going through the Sub-schedule 5, a copy whereof has also been filed by the assessee in his Paper Book for A.Y. 2011-12 at page no. 253, it has been observed that it is in the form of a fund flow statement, drawn for the period from 01/04/2009 to 31/03/2016 in which on the upper part, inflow of funds have been shown and in the lower part, outflow of funds have been shown. In the above said Sub-schedule 5, the details of various fixed assets acquired by the assessee during the period from 01/04/2009 to 31/03/2016 have been shown to be at Rs.8,44,88,961/- only. The details of such fixed assets have been given in the Sub-Schedule 5 itself and we find that all the items of the land in respect of which the additions have been made, have duly been incorporated by the Special Auditors in the aforesaid Sub-Schedule 5. From the Sub-Schedule 5, as drawn by the Special Auditors, we further find that for the period from 01/04/2009 to 31/03/2016, the inflow of the funds in the hands of the assessee have been shown mainly coming out of the unsecured loans aggregating to a sum of Rs.75,33,47,900/- alleged to have been taken by the assessee from various persons as per the details given in the Annexure-1 to such Sub-schedule 5, a copy whereof is placed at at page no. 254 of the assessee's Paper Book for A.Y. 2011-12.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Further, from the Sub-Schedule 5 (PB 253), a sum of Rs.14,66,64,187/- appears to have been given by the assessee to various person on

account of loans and out of which, refund amounting to Rs. 6,48,80,000/- has been shown as inflow. We further noted from the said Sub-Schedule 5 that for the period from 01/04/2009 to 31/03/2016, for making various investments in immovable properties (fixed assets), only an income of Rs.10,53,407/- has been shown as the source of inflow of funds. We find that in the above referred Annexure-1 to Sub-Schedule 5 of unsecured loans, the Special Auditors have furnished name-wise details of unsecured loans allegedly taken by the assessee from the various persons for an aggregate sum of Rs.75,33,47,900/-. In the background of these facts, we find merit in the contention of the assessee that even if the Tally Data, which became the very basis for the impugned additions, are presumed to be correct, then also there being no allegation of any undisclosed income or undisclosed capital of the assessee, no addition could have been made. From the compilation of the personal diaries, it transpires that in such diaries, the very sources of making unrecorded/unaccounted investment in immovable properties have been shown to be out of unsecured loans taken by the assessee from some other persons as per the details compiled by the Special Auditors in Annexure-1 of Sub-schedule 5. In our considered view, any seized document has to be interpreted in its entirety and a combined full effect of such document is required to be taken into consideration while making the assessment. In our view, making of unrecorded investment can be subjected to income of an assessee only if the sources of making such investments remain unexplained. However, in the instant case, from the seized diaries and compilation made on the basis of such diaries by the Special Auditors, appointed under s.142(2A) of the Act, the sources of making investments in immovable properties are becoming visible and the sources are such which can be regarded only as capital receipts in the hands of the assessee and by no stretch of imagination, such sources can be termed to be undisclosed income of the assessee.

13.14 Accordingly, in the light of the findings given hereinabove, we find no infirmity in the action of the Id. CIT(A) in deleting the additions amounting to Rs.42,99,000/- in A.Y. 2011-12, Rs.30,07,050/- in A.Y. 2012-13, Rs.4,07,01,630/- in A.Y. 2013-14, Rs.2,49,47,481/- in A.Y. 2014-15, Rs.1,70,76,800/- in A.Y. 2015-16 and Rs.44,00,000/- in A.Y. 2016-17. Resultantly, the Ground No. 3 of the Revenue for A.Y. 2011-12, A.Y. 2012-13, A.Y. 2013-14, A.Y. 2015-16; Ground No. 2 of the Revenue for A.Y. 2014-15 and; Ground No. 5 of the Revenue for A.Y. 2016-17 are hereby Dismissed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

14. Ground No. 5 of the Revenue for A.Y. 2011-12; Ground Nos. 9(a) & 9(b) of the Assessee for A.Y. 2012-13; Ground Nos. 10(a) & 10(b) of the Assessee for A.Y. 2013-14; Ground Nos. 8(a) & 8(b) of the Assessee for A.Y. 2014-15; and Ground Nos. 11(a) & 11(b) of the Assessee for A.Y. 2016-17 14.1 Through this ground of appeal, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs.1,95,00,000/- made by the AO, in the income of the assessee for A.Y. 2011-12, on account of unexplained investment in purchase of land at village Lalitpur and also, in deleting the addition of Rs.40,00,000/- made by the AO on account of unexplained investment in purchase of plot no. 355, Jhansi Civil, Jokhanbag. Against the action of the Id. CIT(A) in holding that the assessee had made undisclosed investment in the purchase of the land at Village Lalitpur of an aggregate sum of Rs. 1,18,38,310/- and accordingly, making the corresponding addition of Rs. 35,10,000/- in A.Y. 2012-13, Rs. 77,28,310/- in A.Y. 2013-14, Rs. 4,00,000/- in A.Y. 2014-15 and Rs.2,00,000/- in A.Y. 2016-17 by invoking the provisions of s. 251(2) of the Act, the assessee is in

appeal for the respective years before us.

14.2 Briefly stated facts of the issue relating to unexplained investment of Rs.1,95,00,000/- in purchase of land at village Lalitpur, as emanated from the assessment order, are that during the course of the search, some loose papers inventorized as UPS-01, A-5, Page No. 50 & 51, in the form of a Memorandum of Understanding (MOU) in respect of purchase of land by the assessee situated at Lalitpur for a total consideration of Rs.1,95,00,000/- were found. During the course of the assessment proceedings, the AO, vide his show-cause notice, required the assessee to furnish his explanation on this issue. The assessee did not furnish any explanation on the subject issue before the AO. However, the AO by giving a finding that the assessee had accepted to have purchased the said land in form of cash and could not furnish the details of sources of such purchases, made the addition of Rs. 1,95,00,000/- in the assessee's income for A.Y. 2011-12 on account of unexplained investment in purchase of land.

14.3 The facts of the issue relating to unexplained investment of Rs.40,00,000/- qua the unexplained investment in purchase of plot no. 355, Jhansi Civil, Jokhanbag, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the hotel premises of the assessee situated at Hotel Ambrosia, Jhansi, some loose papers inventorized as UPS-01, A-2, Page No. 20 to 32, in the form of an Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 agreement in respect of purchase of some plot by the assessee situated at 355, Civil Jokhanbag, Jhansi for a total consideration of Rs.54,50,000/- were found as against the value shown in the registered document at Rs. 30,50,000/-. During the course of the assessment proceedings, the AO, vide his show-cause notice, required the assessee to furnish his explanation on this issue. In reply, the assessee submitted that the subject agreement was entered into by the assessee along with his real brother namely Shri Virendra Rai for purchase of plot in joint ownership. The assessee further submitted that out of the total agreed consideration of Rs.54,50,000/- as mentioned in the agreement, a sum of Rs.14,50,000/- through cheques and Rs.16,00,000/- through cash thereby aggregating to Rs.30,50,000/- only was paid by the assessee's brother Shri Virendra Rai and no payment was made by the assessee. The assessee also submitted that since the plot was under a legal dispute, the balance consideration of Rs.24,00,000/- was not paid which is also evident from the copy of agreement itself. The AO duly considered and accepted the payment of Rs.14,50,000/- as made through account payee cheques. However, the AO for the remaining amounts, treated the cash payment of Rs.16,00,000/- as unexplained and for the amount of Rs.24,00,000/- as outstanding due to legal dispute, held that the assessee could not furnish any evidence regarding dispute of land. Accordingly, the AO made an addition of Rs.40,00,000/- on account of unexplained investment in purchase of plot.

14.4 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A), inter alia agitating both the aforesaid issues. During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences which were also furnished by him before the AO. During the course of the appellate proceedings, before the Id. CIT(A), the assessee also furnished certain documents, as additional evidences under Rule 46A which were forwarded to the Assessing Officer for comments. The copy of the Remand Report of the AO was provided by the Id. CIT(A) to the assessee and in

response, the assessee filed its rejoinder.

14.4.1 The Id. CIT(A), after considering the remand report of the AO as well as the rejoinder of the assessee, observed that as per the MOU itself, during the previous year relevant to A.Y. 2011-12, the assessee has not paid any single amount towards purchase of the subject property as the date of execution of the MOU itself is 17.02.2012 which falls in the previous year relevant to A.Y. 2012-13. The Id. CIT(A) further noted that, as per the MOU, as against the total agreed consideration of Rs.1,95,00,000/- for purchase of 9.75 Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 acres land, the assessee had made only two payments of Rs.3,00,000/- in cash and Rs.3,00,000/- through account payee cheque bearing no. 503108 dated 04-10-2011 drawn on Bank of Baroda, Jhansi and the remaining amount of Rs.1,89,00,000/- was payable as on the date of execution of the agreement. The Id. CIT(A) also noted that against the MOU entered into by the assessee for purchase of 9.75 acres land, he had purchased land admeasuring 6.4925 acres only under two separate registered purchase deeds dated 21.03.2012 and 04.04.2012 for a total consideration of Rs.1,58,86,680/-. Thus, the Id. CIT(A) found merit in the contention of the assessee that he had actually purchased land admeasuring 6.4925 acres only against the total land area at 9.75 acres stated in the MOU. The Id. CIT(A) noted that the AO, in his remand report, could not controvert the assessee's contention as regard to the actual purchase of 6.4925 acres of land as against the total land area of 9.75 acres in the seized MOU. According to the Id. CIT(A), out of the total purchase consideration of Rs.1,58,86,680/-, the assessee had duly recorded a sum of Rs.40,48,370/- in his regular books of account which was evident from the copies of the audited financial statements of the assessee for F.Y. 2011-12 and F.Y. 2012-13. Thus, the Id. CIT(A) noted that out of the total purchase consideration of Rs.1,58,86,680/-, only a sum of Rs.40,48,370/- has been recorded by the assessee in his books of account and the remaining sum of Rs.1,18,38,310/- were not recorded in the books as has been admitted by the assessee himself. Accordingly, the Id. CIT(A) held the investment to the extent of Rs.1,18,38,310/- remained unexplained on this count. However, the Id. CIT(A) found that the payments aggregating to Rs.1,18,38,310/- were made by the assessee in four different assessment years viz. A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 & A.Y. 2016-17 and not in the previous year relevant to A.Y. 2011-12 which is also evident from the jottings made in the seized diaries in respect of payments made to Shri Kamal Likhdhari and Shri Ramcharan Rathore which are pertaining to the payments made towards purchase of subject lands at Lalitpur. Thus, according to the Id. CIT(A), since no payment was made by the assessee during the previous year relevant to A.Y. 2011-12, no addition was warranted in the A.Y. 2011-12. Accordingly, the Id. CIT(A) deleted the entire addition of Rs.1,95,00,000/- made by the AO on account of unexplained investment in land at Lalitpur. The Id. CIT(A) has given the relevant findings in respect of the issue of unexplained investment in land at Lalitpur at para (4.16.4) of his order, which are reproduced as under:

"4.16.4 I have considered the facts of the case, the Assessment Order, the written as well as oral submissions of the appellant, the remand report of the AO and the rejoinder of the appellant. I find sufficient force in the contention of the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 appellant that as per the MOU itself, during the previous year relevant to A.Y. 2011-12, the appellant has not paid any single amount towards purchase of the subject property as the date of execution of the MOU itself is 17.02.2012 which falls in the previous year relevant to A.Y. 2012-13.

Further, as per the MOU, as against the total agreed consideration of Rs.1,95,00,000/- for purchase of 9.75 acres land, the appellant had made only two payments of Rs.3,00,000/- in cash and Rs.3,00,000/- through account payee cheque bearing no. 503108 dated 04-10-2011 drawn on Bank of Baroda, Jhansi and the remaining amount of Rs.1,89,00,000/- was payable as on the date of execution of the agreement. Against the MOU entered into by the appellant for purchase of 9.75 acres land, he had purchased land admeasuring 6.4925 acres only under two separate registered purchase deeds dated 21.03.2012 and 04.04.2012 for a total consideration of Rs.1,58,86,680/-. Thus, I find merit in the contention of the appellant that he had actually purchased land admeasuring 6.4925 acres only against the total land area at 9.75 acres stated in the MOU. The AO, in his remand report, could not controvert the appellant's contention as regard to the actual purchase of 6.4925 acres of land as against the total land area of 9.75 acres in the seized MOU. Out of the total purchase consideration of Rs.1,58,86,680/-, the appellant had duly recorded a sum of Rs.40,48,370/- in his regular books of account which is clearly evident from the copies of the audited financial statements of the appellant for F.Y. 2011-12 and F.Y. 2012-13. It is an undisputed fact that out of the total purchase consideration of Rs.1,58,86,680/-, only a sum of Rs.40,48,370/- has been recorded by the appellant in his books of account and the remaining sum of Rs.1,18,38,310/- were not recorded in the books as has been admitted by the appellant himself. Thus, the investment to the extent of Rs.1,18,38,310/- remained unexplained on this count. However, I find that the payments aggregating to Rs.1,18,38,310/- were made by the appellant in four different assessment years viz. A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 & A.Y. 2016-17 and not in the previous year relevant to A.Y. 2011-12. On a perusal of the seized diaries, it is evident that the jottings in respect of payments made to Shri Kamal Likhdhari and Shri Ramcharan Rathore are pertaining to the payments made towards purchase of subject lands at Lalitpur only. Thus, it is crystal clear that since no payment has been made by the appellant during the previous year relevant to A.Y. 2011-12, no addition would be warranted in the A.Y. 2011-12. Accordingly, the addition of Rs.1,95,00,000/- so made by the AO in the appellant's income in A.Y. 2011-12 is Deleted. Therefore, appeal on these grounds are Allowed.

However, since the payments for purchase of subject lands at Lalitpur have been made by the appellant in subsequent assessment years, Enhancement of Income of the appellant for such assessment years have been made separately."

14.4.2 However, the Id. CIT(A), by invoking his powers u/s. 251(2) of the Act, made additions of Rs.35,10,000/- in A.Y. 2012-13, Rs.77,28,310/- in A.Y. 2013-14, Rs.4,00,000/- in A.Y. 2014-15 and Rs.2,00,000/- in A.Y. 2016-17, thereby aggregating to Rs.1,18,38,310/-, on account of unaccounted payments made towards purchase of aforesaid land at Lalitpur. The relevant findings of Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the Id. CIT(A) as regard to the enhancement of income of the assessee for the aforesaid years are given at para (4.30) of his Order, which are reproduced as under:

"ENHANCEMENT OF INCOME:

4.30 During the course of serach a MOU dated 17.02.2012 was foun and seized. The MOU was signed between three parties. The first party to the MOU was Shri Ramcharan Rathore and others who had purchased the piece of land admeasuring 9.75 acres located at Lalitpur from the second party namely Shri Kamal Likhdhari who was the owner of the said land. The third party to the agreement was the appellant who had been shown as the subsequent purchaser. As per the MOU, out of the total consideration of Rs.1,95,00,000/- (i.e. Rs. 20,00,000/- per acre), consideration to the extent of Rs. 84,00,000/- was agreed to be paid by the appellant to the original purchasers namely Shri Ramcharan Rathore and others and the balance consideration of Rs. 1,11,00,000/-, as agreed upon by the appellant, was required to be paid to the original seller namely, Shri Kamal Likhdhari. The appellant further stated that out of the total land admeasuring 9.75 acres, the appellant could purchase and obtain the possession of the land admeasuring 6.4925 acres only and the balance land admeasuring 3.2575 acres was never purchased by the apepllant. In support appellant has filed copies of two registered sale deeds, subsequently executed in his favour on 21-03-2012 and 04-04-2012. The appellant further submitted that he was required to make the proportionate payment of Rs. 1,29,85,000/- only i.e. Rs. 20,00,000/- per acre for 6.4925 acres. However, as against the aforesaid payment of Rs. 1,29,85,000/-, the appellant has made a higher payment aggregating to a sum of Rs.1,45,60,550/- on various dates. Further, the appellant was also required to incur expenditure towards stamp duty and registration expenses to the extent of Rs. 12,76,130/-. Thus, in aggregate, the appellant was required to make payments aggregating to a sum of Rs. 1,58,86,680/- [Rs. 1,46,10,550/- (+) Rs. 12,76,130/-]. The appellant has furnished details of payments of Rs.1,58,86,680/- made by him in four different assessment years viz Rs.38,10,000/- in A.Y. 2012-13; Rs.1,14,76,680/- in A.Y. 2013-14; Rs.4,00,000/- in A.Y. 2014-15; and Rs.2,00,000/- in A.Y. 2016-17. Before me, the appellant claimed that out of the total purchase consideration of Rs.1,58,86,680/- so made by him in purchase of lands at Lalitpur, he had recorded a sum of Rs.40,48,370/- only in his regular books of account and the remaining sum of Rs.1,18,38,310/- was not so recorded. However, the additions were made in AY 2011-12 only. Therefore, during the course of appellate proceedings, notice of enhancement u/s 251(2) of the act was issued on 26.06.2020 and appellant was required to show cause as to why income for A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-17 amunting to Rs.35,10,000/-, Rs.77,28,310/- , Rs.4,00,000/- and Rs.2,00,000/- should not be enhanced. The appellant in reply filed written submission dated 02.07.2020. The appellant through written and oral submission has reiterated that he had nothing to comment upon the proposal of enhancement for various years. In such circumstances, income of the appellant is enhanced by Rs. 35,10,000/- in AY 2012-13, Rs.77,28,310/- in AY 2013-14, Rs.4,00,000/- in AY 2014-15 and Rs.2,00,000/- in AY 2016-17. Since the appellant has furnished inaccurate Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 particulars of income, penalty proceedings u/s 271(1)(c)/271AAB are initiated separately."

14.4.3 As regard the issue of unexplained investment in purchase of plot no. 355 at Jokhanbag, the ld. CIT(A) observed that the said plot was purchased by the assessee and his brother Shri Virendra Rai in co-ownership and during the course of the assessment proceedings only, the assessee has stated that out of the total consideration of Rs.54,50,000/-, only a sum of Rs.30,50,000/- was paid by his real brother Shri Virendra Rai and the balance consideration of Rs.24,00,000/- was payable due to some legal dispute. The ld. CIT(A) further noted that during the course of the appellate proceedings, the assessee furnished copies of registered purchase deeds in which there is a clear cut mention of the dispute which has got finally resolved through an Order dated 25.10.2018 passed by the District Collector, Jhansi. Thus, according to the ld. CIT(A), there is no ambiguity regarding the disputed status of the property. The ld. CIT(A) found merit in the contention of the assessee that only upon resolution of the dispute, the balance consideration of Rs.24,00,000/- was paid by him out of his explained sources. The ld. CIT(A) observed that the payment of Rs.30,50,000/- was made by Shri Virendra Rai out of which a sum of Rs.16,00,000/- was paid by him in cash. According to the ld. CIT(A), the assessee furnished a copy of Undertaking by Shri Virendra Rai in respect of making of the aforesaid payment and a copy of his income-tax return for A.Y. 2011-12 which could not be rebutted by the AO in his remand report. Thus, the ld. CIT(A) held that once the other co-owner of the property has clearly given his undertaking as regard to making of the cash payment of Rs.16,00,000/-, no adverse inference could be drawn against the assessee without having any cogent material on record. Accordingly, the ld. CIT(A) deleted the entire addition of Rs.40,00,000/- made by the AO in the assessee's income on account of unexplained investment in purchase of subject plot at Jokhanbag. The ld. CIT(A) has given the relevant findings in respect of the issue of unexplained investment in plot at Jokhanbag at para (4.17.2) of his Order, which are reproduced as under:

"4.17.2 I have considered the facts of the case, the Assessment Order, the written as well as oral submissions of the appellant, the remand report of the AO and the rejoinder of the appellant. The said plot was purchased by the appellant and his brother Shri Virendra Rai in co-ownership. Further, during the course of the assessment proceedings themselves, the appellant has stated that out of the total consideration of Rs.54,50,000/-, only a sum of Rs.30,50,000/- was paid by his real brother Shri Virendra Rai and the balance consideration of Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Rs.24,00,000/- was payable due to some legal dispute. During the course of the appellate proceedings, the appellant furnished copies of registered purchase deeds in which there is a clear cut mention of the dispute which has got finally resolved through an Order dated 25.10.2018 passed by the District Collector, Jhansi. Thus, there is no ambiguity regarding the disputed status of the property. I find full merit in the contention of the appellant that only upon resolution of the dispute, the balance consideration of Rs.24,00,000/- was paid by him out of his explained sources. Thus, the AO's allegation in the remand report that the subsequent payment by the appellant appears to be afterthought is not tenable. The payment of Rs.30,50,000/- was made by Shri Virendra Rai out of which a sum of Rs.16,00,000/- was paid by him in cash. The appellant furnished a copy of Undertaking by Shri Virendra Rai in respect of making of the aforesaid payment and a copy of his income-tax return for A.Y. 2011-12 which could not be rebutted by the

AO in his remand report. Once the other co-owner of the property has clearly given his undertaking as regard to making of the cash payment of Rs.16,00,000/-, no adverse inference could be drawn against the appellant without having any cogent material on record which suggests that the cash payment was infact made by the appellant. In these circumstances, I find no merit in the AO's action in making the impugned addition of Rs.40,00,000/- in the appellant's income on account of unexplained investment in purchase of subject plot. Thus, addition made by the AO amounting to Rs. 40,00,000/- is Deleted. Therefore, appeal on these grounds is Allowed."

14.5 Aggrieved with the Order of the Id. CIT(A), the revenue is in appeal before us. Whereas aggrieved with the action of the Id. CIT(A) in making enhancement of income for the four assessment years viz. A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 & A.Y. 2016-17, on account of unexplained cash payments towards purchase of land at Lalitpur, the assessee is in appeal before us.

14.6 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

14.7 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

15.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 15.2 Now, we would first take the Revenue's Ground No. 5 for A.Y. 2011-12. We find that in the instant case, the AO has made addition of a sum of Rs. 2,35,00,000/- in the income of the assessee, on account of unexplained investment, in respect of two properties viz. (i) Land situated at Lalitpur (Rs. 1,95,00,000/-) and (ii) Plot at 355, Jhansi Civil, Jokhanbagh (Rs. 40,00,000/-). From the table of the various immovable properties given by the AO at para (28) from page no. 98 to 101, we find that at page no. 101 the AO has given the basis for making the addition of Rs. 1,95,00,000/- on account of land at Lalitpur. From such details, we find that the very basis for making of the addition by the AO was some copy of Agreement found during the course of the search as inventorized as UPS-01-A5 Page No. 50 & 51. We find that a copy of such MOU has been filed by the assessee in his Paper Book filed for A.Y. 2011-12 at page no. 129 & 130. On a perusal of such MOU, we find that such agreement was executed on 17/02/2012 between some Shri RamCharan Rathore & Others and some Shri Kamal Likhdhari. As per such agreement, Shri Kamal Likhdhari had purchased the 9.75 acres land situated at Lalitpur from Shri R.C. Rathore but, failed to make the payment for agreed consideration. Accordingly, as per the MOU, it was agreed upon that the assessee, being the third party to the agreement, would purchase the said land for a consideration of Rs. 1,95,00,000/- out of which, consideration amounting to Rs. 84,00,000/- would be given by him to the original seller being Shri RC Rathore and the remaining consideration would be paid to Shri Kamal Likhdhari being the original

purchaser. In the said agreement, it is mentioned that the assessee has made a payment of Rs. 3,00,000/- to Shri Kamal Likhdhari through account payee cheque on 04/10/2011 and a sum of Rs. 3,00,000/- in cash has been paid to the original seller Shri RC Rathore. On an overall examination of the said agreement dated 17/02/2012, we find that any payment towards purchase of the subject land at village Lalitpur was made by the assessee only during the financial year 2011-12 and in subsequent years, and not during the financial year 2010-11 relevant to A.Y. 2011-12 and therefore, we find no justification in the action of the AO in making the impugned addition in the income of the assessee for A.Y. 2011-12. Thus, we find no infirmity in the action of the Id. CIT(A) in deleting the said addition of Rs. 1,95,00,000/- from the income of the assessee for A.Y. 2011-12.

15.3 In respect of the remaining addition of Rs. 40,00,000/- made by the AO on account of assessee's undisclosed investment in purchase of the Plot No. 355, Jhansi Civil, Jokhanbagh, we find that such additions have been made by the AO on the basis of some copy of agreement seized and inventorized as UPS- 01, A-2, Page No. 20 to 32 as per the details given in the table at page no. 101 Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of the assessment order. We find that the Xerox copy of the seized agreement has been filed by the assessee in his Paper Book for A.Y. 2011-12 at page no. 211 to 225. We further find that in respect of the said plot, a sale deed has duly been executed in favour of the assessee and one other person namely Shri Virendra Rai s/o Shri Hardas Rai of Jhansi on 27/12/2010. A copy of such sale deed has been filed by the assessee at page no. 226 to 247 of the assessee's Paper Book for A.Y. 2011-12. From the copy of the agreement, we find that it has been executed between some Mr. Stephen Singh, acting as secretary and attorney for Bundelkhand Church Council North India Sionord America Press Viterian Church Board of Foreign Mission United Church of Nothern India, as seller, and the assessee and his real brother, Shri Virendra Rai (PAN: AFGPR2874E) as joint purchasers for purchase of a plot admeasuring 2532.540 sq. meters situated at 355, Civil Jokhanbag, Jhansi for a total consideration of Rs. 54,50,000/-. We further find that as per the page no. 2 of the said agreement, up till the date of the execution of the agreement i.e. on 24/12/2010, the purchasers had made payment of a consideration of Rs.30,50,000/- and out of such consideration of Rs. 30,50,000/- , consideration to the extent of Rs. 14,50,000/- was made through various account payee cheques and remaining payment of Rs. 16,00,000/- has been stated to have been paid in the form of cash. We find that in respect of the payment amounting to Rs. 16,00,000/- made in the form of cash, before the AO, the assessee had contended that such payment was made by the other co- purchaser of the property i.e. Shri Virendra Kumar Rai, but, such a claim of the assessee was not accepted by the AO. We find that in the agreement as well as in the sale deed, the name of the Shri Virendra Kumar Rai is clearly appearing as the co-purchaser and therefore, the submission of the assessee before the AO was worth accepting. We find that the other co-purchaser is assessed to Income Tax under PAN: AFGPR2874E and the assessee had duly filed a letter of undertaking from Shri Virendra Rai admitting the making of payment of the aforesaid Rs. 16,00,000/- in cash out of his own resources. In evidence, the assessee has filed a copy of the undertaking giving by Shri Virendra Kumar Rai at page no. 248 of his Paper Book for A.Y. 2011-12 and copy of acknowledgement of income tax return and computation of income of Shri Virendra Kumar Rai for A.Y. 2011-12, showing the taxable income of Rs. 13,89,200/- at page no. 249 & 250 of the Paper Book. Thus, in such circumstances, we do not find any infirmity in the findings given by the Id. CIT(A) holding that the payment amounting to Rs. 16,00,000/- was made by the co-purchaser and not by the assessee. As regard the remaining

amount of Rs. 24,00,000/-, we find sufficient merit in the contention of the assessee that Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 after execution of the said agreement, certain disputes as regard to the title of the property had arisen between the sellers and the purchaser which is evident from the fact that the said agreement was executed on 27/12/2010 but, the corresponding registration of the sale deed in respect of the said property could take place only on 15/12/2018. From the internal page no. 3 & 4 of the sale deed as placed at page no. 226 to 247 of the Paper Book for A.Y. 2011-12, we find that in such sale deed, there is a clear mention of pending litigation before the various courts. Thus, we find substance in the contention of the assessee that the balance consideration of Rs. 24,00,000/- was not paid by the assessee and the co-purchaser during the previous year under consideration, but, it was paid only at the time of registration in the financial year 2018-19. Thus, we find no infirmity in the action of the Id. CIT(A) in deleting the addition of Rs. 40,00,000/- in the income of the assessee for A.Y. 2011-12 made by the AO on account of unexplained investment in purchase of plot at Jhansi. Consequently, in the light of the findings given above, we find no infirmity in the action of the Id. CIT(A) in deleting the entire addition of Rs. 2,35,00,000/- made by the AO in the assessee's income on account of unexplained investment in property for A.Y. 2011-12. Resultantly, the Ground No. 5 of the Revenue for A.Y. 2011-12 is hereby Dismissed.

15.4 Now, we will take up the assessee's Ground of Appeals for A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-17 against the enhancement made by the CIT(A) u/s. 251(2) of the Act in respect of undisclosed investment of the assessee in Land at Village Lalitpur. We find that the Id. CIT(A) at para (4.16.14) has rightly given the finding that the assessee had made undisclosed investment aggregating to Rs. 1,18,38,310/- and such undisclosed investment was not made by the assessee during the A.Y. 2011-12, as wrongly held by the AO, but, factually, such investment was made by the assessee in subsequent years viz. A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-17. We find that the Id. CIT(A) has rightly determined the quantum as well as the assessment year for the undisclosed investment made in various years based upon the incriminating materials. We find that as against the total investment in the land at Rs. 1,58,86,680/-, the assessee has recorded investment to the extent of Rs. 40,38,370/- only in his regular books of account and for the remaining sum of Rs. 1,18,38,310/-, the assessee could not furnish any documentary evidence neither before the authorities below, nor before us. In such circumstances, we are inclined to hold that there was no infirmity in the action of the Id. CIT(A) in determining the assessee's undisclosed investment in purchase of land for A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 17 respectively at Rs. 35,10,000/-, Rs. 77,28,310/-, Rs. 4,00,000/- and Rs. 2,00,000/-.

15.5 Having given our findings as regard to the making of undisclosed investments by the assessee for purchase of land at Lalitpur, as aforesaid, now, we have to consider the plea taken by the assessee before us to the effect that even if it is held that the assessee had made some investment in purchase of some properties which remained unrecorded in his regular books of account, then also, no addition can be made in his income for the reason that although the payments were unrecorded, but, the sources of such payments were out of the disclosed sources. It was contended by the counsel of the assessee that in the case of the assessee, the AO has given a clear finding that the assessee had

derived share of profit, as a member, from various liquor syndicates, in various assessment years. It was demonstrated that as per the AO's own finding for A.Y. 2012-13, the assessee had derived share of profit from the various syndicates amounting to Rs. 3,91,74,989/- (Net of share in loss at Rs. 8,82,883/-) as per the details given the AO at para (14.10) at page no. 51 & 52 of the assessment order. Likewise, for A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2016-17, the AO has determined the share of the profit of the assessee in various syndicates (net of loss) at Rs. 2,20,53,688/-, (-) Rs. 3,55,93,004/- and Rs. 8,21,322/- and such profit was not recorded by the assessee in his regular books but, since, such profit has been determined by the AO himself for making addition in the hands of the assessee, the benefit of telescoping against such income should be given to the assessee. We find that although on the theory of share of profit for each assessment year only no credit for telescoping can be given to the assessee for the very reason that as against such profit, the AO herself while determining the undisclosed investment of the assessee has given due credit. We find that the AO has given one table titled as 'MS-1' at para (14.10) at page no. 50 of her Assessment Order. We find that although, according to the AO, such table was submitted to her by the assessee, but, as per the findings given by the AO herself, at last para of page no. 50, the submission of the assessee was found correct. We find that on the basis of this table only, the AO has made an addition of Rs. 74,80,454/- in the assessee's income for A.Y. 2014-15 on account of unexplained capital investment in syndicate. It is therefore, instead of going by the theory of profit for every year, we would place our reliance on the aforesaid table titled as 'MS-1'. From such table, we find that after considering the share of profit of the assessee for each of the assessment years, amount of fresh investment towards capital in the various syndicates and amount of withdrawals from the capital of such syndicates, in the last column no. 8, the amount of fresh capital invested has Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 been reflected and since, all these figures are in negative, it has been interpreted that in the concerning assessment years, the assessee had not made fresh investments, but, rather made over withdrawals from the capital in various syndicates. We find that as on 31/03/2011, a fund amounting to Rs. 69,98,079/- was available with the assessee in the form of accumulated sum of withdrawals from the capital of various syndicates, which in its turn, got either built up by the assessee's own investment or his share in profit from the syndicates. Thus, we find that even if it is presumed that the subject investment for purchase of land at Lalitpur was made by the assessee on the first day of the previous year relevant to A.Y. 2012-13 for which the Id. CIT(A) has made an addition of Rs. 35,10,000/-, then also, it has to be necessarily held that as against such investment of Rs. 35,10,000/-, funds to the extent of Rs. 69,98,079/- were available in the hands of the assessee on that day in the form of accumulated amount of share of profit from various syndicates (net of reinvestment). Likewise, for other years too, we find that as per the aforesaid table MS-01, the assessee was having sufficient funds for making the subject investments in the land at Lalitpur.

15.6 For the sake of analyzing our above findings, we have prepared one table showing the assessment year wise details of funds available in the hands of the assessee, out of explained sources, for making the unrecorded investments in the land at Lalitpur, as under:

A.Y.	Cumulative funds available at the end of the relevant F.Y. as per Table MS-01	Utilization of the funds out of cumulative	of the	Cumulative adjustment given for utilization of	Re-casted Cumulative funds available at the end of
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	at page no. 50 of the AO's Order	funds being investment in the purchase of the land in subsequent financial year	funds	the relevant F.Y. after givin effect to the cumulative adjustments
[1]	[2]	[3]	[4]	[5 = 2-4]
2011-12	69,98,079	35,10,000	35,10,000	34,88,079
2012-13	2,39,48,064	77,28,310	1,12,38,310	1,27,09,754
2013-14	5,68,75,621	4,00,000	1,16,38,310	4,52,37,311
2015-16	10,48,91,767	2,00,000	1,18,38,310	9,30,53,457

15.7 We are of the considered view that although the share of profit of the assessee from various syndicates are not chargeable to tax in view of the provisions of s. 86 r.w.s. 67A and 167B of the Act, but, at the same time, we are of the view that although such profit was not taxable, but, once it is established that such profit was withdrawn by the assessee from the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 syndicates and even after considering fresh investment in the syndicates, there remained accumulated balance of share of profit in the hands of the assessee, then, the funds generated through some accumulated profit will have to be necessarily taken as the explained sources for making any investment. From the table given above, it is evident that even after considering the unrecorded investment in the land, the ample of funds remained available in the hands of the assessee for making utilization thereof. In our considered view, the provisions of s. 69, 69A and 69B etc. contemplate the investments the sources whereof remained unexplained and it does not contemplate deeming any income on the sole basis of recording or non-recording of any investment in the books of account. Although, in the instant case, the payments made by the assessee for purchase of the land, over and above that stated in the registered sale deeds remained unrecorded in the regular books of account, but, such fact alone cannot be a basis for making the addition if the assessee is in a position to demonstrate the sources of making such investments and in respect of such sources of investments, the assessing officer has already made additions. In our considered view, even if the income from the syndicates remained exempted in the hands of the assessee because of the operation of the law, but, at any rate, the credit for such income deserves to be given to the assessee for explaining the sources of other investments. Thus, on the theory of telescoping for which the assessee is legally entitled to, we find no merit in the action of the Id. CIT(A) in making the addition of Rs. 35,10,000/- in A.Y. 2012-13, Rs.77,28,310/- in A.Y. 2013-14, Rs.4,00,000/- in A.Y. 2014-15 and Rs.2,00,000/- in A.Y. 2016-17, thereby aggregating to Rs.1,18,38,310/-, on account of unaccounted payments made towards purchase of aforesaid land at Lalitpur. Resultantly, the Ground Nos. 9(a) & 9(b) of the Assessee for A.Y. 2012-13; Ground Nos. 10(a) & 10(b) of the Assessee for A.Y. 2013-14; Ground Nos. 8(a) & 8(b) of the Assessee for A.Y. 2014-15; and Ground Nos. 11(a) & 11(b) of the Assessee for A.Y. 2016-17 are hereby Allowed.

16. Ground No. 4 of the Revenue for A.Y. 2013-14; Ground no. 5 of the Revenue for A.Y. 2015-16 and Ground Nos. 10(a) & 10(b) of the Assessee for A.Y. 2015-16 16.1 Through the Ground No. 4 for A.Y. 2013-14, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs.31,500/- made by the AO on account of undisclosed expenditure in purchase of jewelleryes.

Further, through the Ground No. 5 for A.Y. 2015-16, the Revenue has challenged the action of the Id. CIT(A) in deleting the addition to the extent of Rs.2,14,72,474/- out of the total addition of Rs.2,22,56,148/- made by the AO Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 on account of undisclosed expenditure in purchase of jewelleryes. On the other hand, the assessee, through his grounds for A.Y. 2015-16, has challenged the action of the Id. CIT(A) in partially confirming the addition to the tune of Rs.7,83,674/- on the aforesaid count.

16.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the survey operations u/s. 133A of the Act carried out in the hotel premises of the assessee M/s. Hotel Ambrosia situated at Jhansi (U.P.), certain loose papers were found and impounded. On the basis of the loose papers so impounded, the AO drawn one table specifying the relevant seized document, relevant financial year, nature of document and amount and also reproduced the screenshots of the impounded documents at para (21) of her Order at page no. 81 to 83. The AO, from such loose papers, noted that the assessee had made some unexplained expenditure in purchase of jewelleryes. During the course of the assessment proceedings, the AO, vide a show cause notice, required the assessee to furnish his explanation on this issue. In reply, the assessee made his explanation which is also reproduced by the AO at para (21.1) on page no. 83 of the impugned Order. The assessee claimed that out of the total seven items listed in said loose papers, two items aggregating to Rs.1,22,89,648/- were mere estimates and dumb documents. The assessee further claimed that the third item of Rs.31,23,000/- pertained to the list of jewelleryes of the assessee and his family members which were acquired as stridhan/ gift and were pledged with Canara Bank, Jhansi for obtaining gold loan. The assessee also claimed that the remaining four items aggregating to Rs.68,75,000/- were based on jottings made in the diary which was written by the deceased accountant of the assessee Shri Navdeep Shrivastava and the notings of such items were not belonging/ pertaining to the assessee. The AO, discarding and disregarding the entire explanation of the assessee, made additions of Rs.31,500/- and Rs.2,22,56,148/- respectively in A.Y.2013-14 and A.Y.2015-16 on account of assessee's unexplained expenditure in purchase of jewelleryes.

16.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. During the course of the appellate proceedings, before the Id. CIT(A), the assessee also furnished certain documents, as additional evidences under Rule 46A which were forwarded to the Assessing Officer for comments. The copy of the Remand Report of the AO was provided by the Id. CIT(A) to the assessee and in response, the assessee Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 filed his rejoinder. The Id. CIT(A), after considering the remand report of the AO as well as the rejoinder of the assessee, held that the AO could not bring any adverse corroborative material on record to prove the actual purchase of jewelleryes by the assessee. The Id. CIT(A) observed that both the loose papers containing the details of jewelleryes of Rs.31,500/- and Rs.1,22,58,148/- have the caption of 'estimate' and the name of the assessee has been mentioned but they do not contain any date. The Id. CIT(A) also noted that during the course of search, no physical jewelleryes of the description and weight noted on such estimates were found from any of the premises of the assessee. The Id. CIT(A) further noted that during the course of the search, no seizure of jewelleryes was made from the possession of the assessee. Accordingly, the Id. CIT(A) deleted the additions of

Rs.31,500/- made for A.Y. 2013-14 and addition to the tune of Rs.1,22,58,148/- out of the total addition of Rs.2,22,56,148/- made for A.Y. 2015-16. Further, in respect of the remaining additions of Rs.99,98,000/- for A.Y. 2015-16, the ld. CIT(A) noted that the amounts aggregating to Rs.68,75,000/- were based on the jottings made in some personal diary of one accountant of the assessee namely Shri Navdeep Shrivastava. The ld. CIT(A) held that the diary could not be made a sole basis for making additions in the hands of the assessee and in the given circumstances that during the course of the search, no physical jewellerys were found from the possession of the assessee, the addition to the extent of Rs.68,75,000/- has also been deleted by the ld. CIT(A). Again, out of the remaining addition of Rs.31,23,000/- [Rs.99,98,000 (-) Rs.68,75,000], the ld. CIT(A) on the basis of a copy of gold loan account statement of Canara Bank in the name of Smt Meena Rai and Shri Manish Rai noted that on the basis of the list of jewellerys, the bank had assessed the market value of jewellerys weighing 1735.5 gms. at Rs.41,64,000/- and after computing the eligibility for a loan of Rs.31,23,000/-, has duly sanctioned a sum of Rs.30,00,000/- to the assessee, his wife Smt. Meena Rai and his son Shri Manish Rai. The ld. CIT(A) further observed that the assessee claimed that these jewellerys were acquired by him and his family members as Stridhan/ Gift/ or by inheritance from their ancestors. The ld. CIT(A) also noted that during the course of the search and seizure operations, no adverse inference was drawn by the search party as regard to such jewellerys and even the AO, in the impugned Order, has not given any adverse finding to this effect. However, as regard the claim of the assessee to have acquired the jewellerys as Stridhan/ gift being fully covered by the CBDT Instruction No. 1916, the ld. CIT(A) noted that according to the CBDT Instruction, the assessee and his family members, consisting of two married ladies and three males, were eligible for jewellerys held as stridhan for an Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 aggregate weight of 1300 gms. (100+500+500+100+100) only. However, since the jewellerys found noted on the seized loose paper were weighing 1735.5 gms., even after giving credit for jewellerys held as stridhan, there was a shortfall of 435.5 gms. which remained unexplained. Accordingly, the ld. CIT(A) computed the proportionate value of 435.5 gms. jewellerys at Rs.7,83,674/- and out of the addition of Rs.31,23,000/- made by the AO on the basis of the valuation report submitted to the bank, addition to the extent of Rs.7,83,674/- has been confirmed by the ld. CIT(A) and the remaining addition of Rs.23,39,326/- was allowed. Thus, out of the total addition of Rs.2,22,56,148/- made by the AO for the A.Y. 2015-16, the ld. CIT(A) gave an aggregate relief of Rs.2,14,72,474/- [Rs.1,22,58,148 + Rs.68,75,000 + Rs.23,39,326] and the remaining addition of Rs.7,83,674/- has been confirmed. The ld. CIT(A) has given the relevant findings at paras (4.19.1) to (4.19.4) of his order which are reproduced as under:

"4.19.1 I have duly considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. The subject loose papers containing details of purchases of jewellerys were found and seized from the appellant's hotel premises only. I find that in respect of the two loose papers inventorized as UPO-2, LP-1, Page no. 121 & 122 for a sum of Rs.1,22,58,148/-

and in respect of one another loose paper inventorized as UPS-1, A-6, Page no. 8 for a sum of Rs.31,500/-, the appellant had submitted that these loose papers were in the form of estimates only. The appellant also submitted that these estimates did not contain any name of the appellant. During the course of the appellate proceedings, the appellant, in support of his contention, furnished an

additional evidence in the form of an Affidavit stating that he had not purchased any jewellery as per the seized estimates. A copy of such additional evidence was forwarded to the AO by this Office letter dated 24.07.2019. The AO, in reply, submitted remand report vide letter dated 16.03.2020. The AO, in his Remand Report, objected acceptance of the additional evidence filed during the course of the appellate proceedings by stating that the affidavit could not be considered as sufficient for supporting the claim of the appellant that he had not purchased the impugned jewellery. The remand report of the AO was provided to the appellant for his counter comments. The appellant, in his rejoinder dated 25.06.2020, submitted that the AO has not made any comments on the contents of the additional evidences furnished by the appellant and had not brought any adverse material on record to prove that any such jewellery was actually purchased by the appellant. I find merit in the contention of the appellant that the AO could not bring any adverse corroborative material on record which could prove the actual purchase of jewellery by the appellant. I also find that the AO had not controverted the contents of the affidavit furnished by the appellant. I am of the firm view that any transaction found noted on any estimate is not conclusive and for confirming that any transaction had actually taken place, all the surrounding factors and documents are also required to be taken into consideration. Sole reliance on the estimate which does not contain the name of the appellant cannot be the basis for making any addition in the hands of the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 appellant. In my considered view, as per the settled law, the initial onus lies upon the assessing officer that the assessee had made any investment or had incurred any expenditure and once this onus is discharged with any positive material on record, then only, the assessee can be subjected to explain the sources of the alleged investment or expenditure. An assessee cannot be supposed to discharge the negative burden. The AO vide para (21.2.1) of the impugned Order, has disregarded the explanation of the appellant with a finding that the appellant could not disprove the purchase of the jewellery with any positive evidence. I further find that both the loose papers containing the details of jewellery of Rs.31,500/- and Rs.1,22,58,148/-, have the caption of 'estimate'. Further the name of the appellant has been mentioned. In the loose paper containing the details of Rs.1,22,58,148/-, even the date has not been found mentioned. I also find merit in the contention of the appellant that during the course of the search, no physical jewellery of the description and weight noted on such estimates were found from any of the premises of the appellant. During the course of the search, no seizure of any jewellery was made from the possession of the appellant and therefore, the contention of the appellant that such loose papers contain only estimates and quotations for the jewellery and no actual transaction against such estimates had actually taken place has substantial merit. Thus, I do not find any merit in the AO's action in not accepting the appellant's explanation as regard to the additions of Rs.31,500/- made for A.Y. 2013-14. Further, in the light of the findings given above, out of the addition of Rs.2,22,56,148/- made for A.Y. 2015-16, the addition made to the extent of Rs.1,22,58,148/- also deserves to be deleted.

4.19.2 Now, as regard the remaining additions of Rs.99,98,000/-, out of the total additions of Rs.2,22,56,148/-, pertaining to A.Y. 2015-16, the sum of Rs.2,75,000/-, Rs.15,00,000/-, Rs.1,00,000/- and Rs.50,00,000/- thereby aggregating to a sum of Rs.68,75,000/-, have been made by the AO on the basis of jottings found made in some personal diary of one accountant of the appellant. The jottings were so made in a personal diary maintained by some Mr. Navdeep Shrivastava, who although alive at the time of the search, but had passed away at the time of passing

the impugned Order. In support of such contention, the appellant has furnished a copy of Death Certificate issued by the concerning Government Authority showing the date of death of Shri Navdeep Shrivastava on 11-04-2017 at page no. 271 of the Paper Book for A.Y. 2011-12 filed before me. I have also gone through the statements of Late Shri Navdeep Shrivastava recorded u/s. 133A during the course of the simultaneous survey carried out in one of the premises of the appellant namely M/s. Hotel Ambrosia, Nanak Ganj, Jhansi by the survey party. As regard the authenticity of the various transactions found noted in the personal diaries of Shri Navdeep Shrivastava, while adjudicating the ground nos. 12(a) & 12(b) for A.Y. 2011-12, ground nos. 10(a) & 10(b) for A.Y. 2012-13 & A.Y. 2016-17, ground nos. 11(a) & 11(b) for A.Y. 2013- 14 & A.Y. 2015-16 and ground nos. 9(a) & 9(b) for A.Y. 2014-15, I have already given my finding that these diaries cannot be a sole basis for any addition in the hands of the appellant. The transactions of some other persons/ entities, other than the appellant, were also noted. Further, the Special Auditors, in the sub- schedule 5 of their Report, which has been prepared by the Special Auditors on the basis of tally datas, which in its turn, were based upon various diaries and Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 loose papers seized during the course of the search, have reported total investment in jewellery by the appellant during the period from 01.04.2009 to 31.03.2016 to be at Rs.68,75,000/-. However, as per the same sub-schedule 5, the funds to the extent of Rs.82,03,00,307/- were available to the appellant from various sources. Out of such available funds, funds to the extent of Rs.10,53,407/- alone have been shown to be out of income/ own capital of the appellant. As against such inflow of funds of Rs.82,03,00,307/-, total outflow of funds have been shown to be at Rs.44,54,46,219/- only thereby resulting into net inflow of Rs.37,48,54,088/-. As per the working of the Special Auditors, such net inflow is not a result of any undisclosed income of the appellant but, receipt of unsecured loans as per the seized documents. I find merit in the contention of the appellant that the diaries referred to by the AO, were not containing the details of the transactions carried out by the appellant only but it also contained those jottings which were carried out by some other assessee/ entities and therefore, without having any other corroborative evidence, the diaries, which cannot be considered to be books of account, by themselves, have no evidentiary value and therefore, merely on the basis of such diaries, no addition can be made. I also find merit in the alternate contention of the counsel of the appellant that even if for the sake of presumption, it is presumed that all the jottings found noted in the diaries represents the actual financial transactions carried out by the appellant only, even in such a case, on the basis of such diaries, no addition is warranted. The contention of the appellant that as per the settled law, any seized document has to be read and interpreted in its entirety and the revenue is not entitled to rely upon only one part of the seized material by disregarding the other part of the same seized material. If the diaries and consequently, the fund flow statement in sub-schedule 5 drawn by the Special Auditors on the basis of such diaries are taken to be the correct portray of the fund flow statement of the appellant for the period from 01.04.2009 to 31.03.2016 then, it becomes evident that sources of such jewelleries and various other investments made by the appellant during the aforesaid period were mainly out of the unsecured loans noted in such diaries. As per the cash book prepared by the Special Auditors, on every occasion of purchase of jewellery, the appellant was having sufficient cash balance as per such cash book. The AO except placing reliance on such jottings made in diaries could not bring on record any other corroborative evidence to demonstrate that the appellant had purchased the aforesaid jewelleries amounting to Rs.68,75,000/-. Even during the course of the search, the appellant was not found to be in possession of any undisclosed jewellery. In view of such facts and circumstances, I

do not find any merit in the addition made by the AO on account of undisclosed jewellery qua the aforesaid amount of Rs.68,75,000/-, which has been so made and included in the addition of Rs.2,22,56,148/- for A.Y. 2015-16.

4.19.3 Further, as regard the list of jewelleries valuing Rs.31,23,000/- as noted on the loose paper inventorized as UPO-2, LP-4, Page no. 9, these jewelleries were belonging to the appellant and his family members pledged by the appellant to Canara Bank for obtaining gold loan. I also find that the loose paper is prepared by the bank for pledging the jewelleries for gold loan. I also noted that on the basis of the list of jewelleries, the bank has assessed the market value of jewelleries weighing 1735.5 gms. at Rs.41,64,000/- and after Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 computing the eligibility for a loan of Rs.31,23,000/-, has duly sanctioned a sum of Rs.30,00,000/- to the appellant, his wife Smt. Meena Rai and his son Shri Manish Rai. The appellant also furnished a copy of gold loan account statement of Canara Bank. As regard the mode and source of acquisition of the aforesaid jewelleries, the appellant claimed that these jewelleries were acquired by him and his family members as Stridhan/ Gift/ or by inheritance from their ancestors. Further, during the course of the search and seizure operations, no adverse inference was drawn by the search party as regard to such jewelleries and even the AO, in the impugned Order, has not given any adverse finding to this effect. However, as regard the appellant's contention of acquisition of such jewelleries as stridhan/ gift being fully covered by the CBDT Instruction No. 1916, I find that the claim of the appellant is not getting fully covered by the limits specified by the CBDT Instruction. During the course of the appellant proceedings, the appellant submitted that he was residing in a joint family under a common roof consisting of himself, his wife Smt. Meena Rai, his mother Smt. Prem Bai Rai, his two major sons Shri Manish Rai and Shri Gaurav Rai. Thus, according to the CBDT Instruction, the appellant and his family members were eligible for jewelleries held as stridhan for an aggregate weight of 1300 gms. (100+500+500+100+100). However, since the jewelleries found noted on the seized loose paper were weighing 1735.5 gms., even after giving credit for jewelleries held as stridhan, there would still remain a shortfall of 435.5 gms. which remains unexplained. Accordingly, in my considered opinion, as on the date when the appellant pledged the jewelleries with the bank for availing gold loan, the appellant was in possession of jewelleries weighing 435.5 gms. the sources whereof were not explained. The proportionate value of such unexplained investment works out to be at Rs.7,83,674/-. Thus, out of the addition of Rs.31,23,000/- made by the AO on the basis of the valuation report submitted to the bank, addition to the extent of Rs.7,83,674/- is confirmed.

4.19.4 Thus, in view of the findings given above, the addition made by the AO amounting to Rs. 7,83,674/- is Confirmed and appellant gets relief of Rs. 2,14,72,474/- in AY 2015-16 and addition of Rs. 31,500/- in AY 2013-14 is Deleted. Therefore, appeal on these grounds is Partly Allowed."

16.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us. Whereas as against the additions confirmed by the Id. CIT(A), the assessee has preferred an appeal before us.

16.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

16.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

17.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of the authorities below, Special Auditors Report, written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides.

17.2 We find that the AO vide para (21.3) of her Order, has made the addition of Rs. 31,500/- for A.Y. 2013-14 and of Rs. 2,22,56,148/- for A.Y. 2015-16 on account of assessee's unexplained investment in jewellery. We find that the AO has made the subject additions on the basis of certain documents seized/impounded from the premises of the assessee and M/s. Hotel Ambrosia, a related concern of the assessee. We find that a Xerox copy of the seized document pertaining to A.Y. 2013-14 has been filed by the assessee in his Paper Book for such assessment year, at page no. 241. Likewise, the copies of the relevant seized documents pertaining to A.Y. 2015-16 have been filed by the assessee before us in his Paper Book for the concerning assessment year at page no. 186 to 191. Also the scanned copies of such loose papers have also been given by the AO in the body of the assessment order itself.

17.3 On a perusal of the document seized and inventorized as UPS-1, A-6, Page no. 8, as filed by the assessee at page no. 241 of his Paper Book for A.Y. 2013-14, we find that such document is in the form of one Estimate issued by some M/s. Shri Diwanji Jewellers on 21/01/2012 for a value of Rs. 31,500/-. We find from such seized document that first of all, it is in the form of an estimate and not a bill and further, on such estimate, the name of the assessee or his family members or anyone else has not been mentioned. The most vital fact which we noted from the seized document is that such estimate is bearing the date 21/01/2012 which falls during the financial year 2011-12 relevant to A.Y. 2012-13 and therefore, at any rate, in our considered opinion, it could not have been presumed that the assessee made any actual purchase against the jewellery mentioned in such estimate during the financial year 2012-13 relevant to the assessment year 2013-14 under appeal. In nutshell, the Id. AO has made the subject addition in inappropriate assessment year i.e. in A.Y. 2013-14 instead of correct A.Y. 2012-13 and therefore, on this count alone, in our considered view, no addition was warranted in the assessee's income on account of unexplained expenditure in jewellery amounting to Rs. 31,500/-. Thus, we find no infirmity in the action of the Id. CIT(A) in deleting the said addition. Resultantly, the Ground No. 4 of the Revenue for A.Y. 2013-14 is hereby Dismissed.

17.4 Now, coming to the additions made by the AO amounting to Rs. 2,22,56,148/- for A.Y. 2015-16 on the basis of seized/impounded documents, at the outset, we are inclined to hold that the Id. CIT(A) has properly examined Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 each and every seized document and has arrived at a right finding that out of the aforesaid additions of Rs. 2,22,56,148/-, only the addition to the extent of Rs. 7,83,674/- was sustainable. We find that in respect of the two loose papers inventorized as UPO-2, LP-1, Page no. 121 & 122 for a sum of Rs. 1,22,58,148/-, the Id. CIT(A) has rightly held that these loose papers were in the form of estimates only and anywhere the same are not containing the name of the assessee. We find that

during the course of the appellate proceedings, the assessee, in support of his contention to the effect that the jewellery mentioned in the aforesaid estimates were not actually purchased by him had furnished an Affidavit before the Id. CIT(A) and a copy of such Affidavit along with other documents were forwarded by the Id. CIT(A) to the AO vide his Office letter dated 24/07/2019. We find that the AO, in his Remand Report has simply objected the acceptance of the Affidavit as additional evidences, but could not rebut the contents of the Affidavit by conducting any inquiry or bringing any adverse material against the assessee on record. We are of the view that any transaction found noted on any estimate is not conclusive and for confirming that any transaction had actually taken place, all the surrounding factors and documents are also required to be taken into consideration. Sole reliance on the estimate which does not contain the name of the assessee cannot be the basis for making any addition in the hands of the assessee. We are in agreement with the findings given by the Id. CIT(A) that as per the settled law, the initial onus lies upon the assessing officer that the assessee had made any investment or had incurred any expenditure and once this onus is discharged with any positive material on record, then only, the assessee can be subjected to explain the sources of the alleged investment or expenditure. An assessee cannot be supposed to discharge the negative burden. The AO vide para (21.2.1) of the impugned Order, has disregarded the explanation of the assessee with a finding that the assessee could not disprove the purchase of the jewellery with any positive evidence. We further find that in the loose paper containing the details of Rs.1,22,58,148/-, even the date has not been found mentioned. We also find merit in the contention of the assessee that during the course of the search, no physical jewellery of the description and weight noted on such estimates were found from any of the premises of the assessee. We find that the findings given by the Id. CIT(A) to the effect that during the course of the search, no seizure of any jewellery was made from the possession of the assessee could not be rebutted by the CIT(DR) and therefore, the contention of the assessee that such loose papers contain only estimates and quotations for the jewellery and no actual transaction against such estimates had actually taken place has substantial merit. Thus, we do not find Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 any infirmity in the action of the Id. CIT(A) in deleting the addition of Rs. 1,22,58,148/- out of the total addition of Rs. 2,22,56,148/- by giving the findings as discussed above.

17.5 We also find that the remaining additions of Rs.99,98,000/-, out of the total additions of Rs.2,22,56,148/- made by the AO for A.Y. 2015-16, the addition to the extent of Rs.2,75,000/-, Rs.15,00,000/-, Rs.1,00,000/- and Rs.50,00,000/- thereby aggregating to a sum of Rs.68,75,000/-, have been made by the AO on the basis of jottings found made in some personal diary of one accountant of the assessee. The jottings were so made in a personal diary maintained by some Mr. Navdeep Shrivastava, who although alive at the time of the search, but had passed away at the time of passing the impugned Order. We find merit in the contention of the assessee that the diaries referred to by the AO, were not containing the details of the transactions carried out by the assessee only but it also contained those jottings which were carried out by some other assessee/entities and therefore, without having any other corroborative evidence, the diaries, which cannot be considered to be books of account, by themselves, have no evidentiary value and therefore, merely on the basis of such diaries, no addition could have been made. We find that on the basis of the same diaries, the AO had also made other additions in the income of the assessee for the various assessment years on account of assessee's investments in making loans and advances and as also, in

purchase of immovable properties and while adjudicating the grounds raised by the Revenue on these counts against the relief granted by the Id. CIT(A), we have already adjudicated (supra) that merely on the basis of the said diaries, which were recovered from a third person who was found to have been making the jottings in the said diaries at his own, of the transactions relating to the assessee as well as other entities, without having any other corroborative evidence, no addition was justified. We are also in agreement with the findings of the Id. CIT(A) that the Special Auditors, to whom a reference u/s. 142(2A) of the Act was made, in the sub-schedule 5 of their Report, which has been prepared by the Special Auditors on the basis of seized diaries, have reported total investment of the assessee in jewellery during the period from 01/04/2009 to 31/03/2016 to be at Rs.68,75,000/-. Such fact is verifiable from the copy of such Sub-Schedule 5 filed by the assessee in his Paper Book for A.Y. 2011-12 at page no. 253. From such Sub-Schedule, we also find that for making the aforesaid purchase of the jewellerys, the funds to the extent of Rs.82,03,00,307/- were available to the assessee from various sources. Out of such available funds, funds to the extent of Rs.10,53,407/- alone have been shown to be out of income/ own capital of the assessee. As against such inflow Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of funds of Rs.82,03,00,307/-, total outflow of funds have been shown to be at Rs.44,54,46,219/- only thereby resulting into net inflow of Rs.37,48,54,088/-. As per the working of the Special Auditors, such net inflow is not a result of any undisclosed income of the assessee but, receipt of unsecured loans as per the seized documents. Thus, we also find full substance in the alternate contention of the counsel of the assessee that even if for the sake of presumption, it is presumed that all the jottings found noted in the diaries represents the actual financial transactions carried out by the assessee only, even in such a case, on the basis of such diaries, no addition was warranted as rightly held by the Id. CIT(A). The contention of the assessee that as per the settled law, any seized document has to be read and interpreted in its entirety and the revenue is not entitled to rely upon only one part of the seized material by disregarding the other part of the same seized material. If the diaries and consequently, the fund flow statement in sub-schedule 5 drawn by the Special Auditors on the basis of such diaries are taken to be the correct portray of the fund flow statement of the assessee for the period from 01.04.2009 to 31.03.2016 then, it becomes evident that sources of such jewellerys and various other investments made by the assessee during the aforesaid period were mainly out of the unsecured loans noted in such diaries. We find that the AO except placing reliance on such jottings made in diaries could not bring on record any other corroborative evidence to demonstrate that the assessee had purchased the aforesaid jewellerys amounting to Rs.68,75,000/-. We find that the Id. CIT(DR) could not rebut the findings given by the Id. CIT(A) that during the course of the search, the assessee was not found to be in possession of any undisclosed jewellery. In view of such facts and circumstances, we do not find any infirmity in the action of the Id. CIT(A) in further granting a relief of Rs. 68,75,000/- to the assessee out of the total additions for A.Y. 2015-16 made by the AO at Rs. 2,22,56,148/- on account of undisclosed jewellery which were solely based on the jottings made in some seized diaries.

17.6 Now, coming to the remaining addition of Rs. 31,23,000/- pertaining to A.Y. 2015-16, we find that such addition has been made the AO on the basis of one loose paper inventorized as UPO-2, LP-4, Page no. 9. A copy of such loose paper has been placed by the assessee in his Paper Book for A.Y. 2015-16 at page no. 188. On a perusal of such seized paper, we find that it is a statement prepared by the assessee himself for submitting to the Canara Bank for availing some credit facilities

against pledge of the Gold jewellery. We find that such statement contains the various details such as S. No., Description of the Jewellery, Gross Weight and Net Weight of jewellery. Thus, we find that in such document, the aggregate weight of various jewellery works out to be at Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 1735.500 grams which has been valued by the Bank at the rate of Rs. 2400/- per 10 grams at Rs. 41,64,000/-. We find that the assessee in his Paper Book for A.Y. 2015-16 has also filed the copy of the loan statement at page no. 194 to 199. Thus, in our considered view, there cannot be two views that the assessee and his family members were owning the aforesaid jewellery weighing 1735.500 grams which were pledged with the Canara Bank for the purpose of availing the loan facilities in various names. From the loan statements, we found that such loan accounts had got fully squared off on 03/02/2015 and therefore, it can be said that these jewellery were in the possession of the assessee and his family members on the date of search i.e. on 07/01/2016. We find that before us, the Id. CIT(DR) has not rebutted the contention of the assessee that during the course of the search and seizure, no undisclosed jewellery from the possession of the assessee or his family members was found. We find that the sources of the aforesaid jewellery pledged to the bank have been explained by the assessee as having been acquired by way of Stridhan/ Gift/ or by inheritance from his ancestors. In respect of such claim of the assessee, we are in full agreement with the findings given by the Id. CIT(A) that the claim of the assessee is not getting fully covered by the limits specified by the CBDT Instruction. We find that the assessee's family was consisting of the assessee himself, his wife Smt. Meena Rai, his mother Smt. Prem Bai Rai, his two major sons Shri Manish Rai and Shri Gaurav Rai. Thus, according to the CBDT Instruction, the assessee and his family members were eligible for jewellery held as stridhan for an aggregate weight of 1300 gms. (100+500+500+100+100). However, since the jewellery found noted on the seized loose paper were weighing 1735.5 gms., even after giving credit for jewellery held as stridhan, there would still remain a shortfall of 435.5 gms. which remains unexplained. Accordingly, we find no inconsistency in the findings given by the Id. CIT(A) that the jewellery weighing 435.500 grams valuing Rs. 7,83,674/- remained unexplained by the assessee. Thus, we find no infirmity in the action of the Id. CIT(A) in confirming the addition to the extent of Rs. 7,83,674/- out of the addition of Rs. 31,23,000/- made by the AO on the basis of loose paper seized and inventorized as UPO-2, LP-4, Page No. 9. Thus, we find ourselves in full agreement with the findings given by the Id. CIT(A) that the additions amounting to Rs. 31,500/- made by the AO in the assessee's income for A.Y. 2013-14 and Rs. 2,14,72,474/-, out of the total additions of Rs. 2,22,56,148/- made by the AO, for A.Y. 2015-16, were not justified and addition of Rs. 7,83,674/- only for A.Y. 2015-16 was sustainable on account of unexplained expenditure in jewellery. Accordingly, the Ground No. 4 of the Revenue for A.Y. 2013-14; Ground no. 5 of the Revenue for A.Y.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 2015-16 and as also, Ground Nos. 10(a) & 10(b) of the Assessee for A.Y. 2015- 16 are hereby Dismissed.

18. Ground No. 6 of the Revenue for A.Y. 2013-14 18.1 Through the Ground No. 6, for A.Y. 2013-14, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs.10,00,000/- made by the AO on account of unexplained investment in purchase of land at village Lalitpur.

18.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the hotel premises of the assessee situated at Hotel Ambrosia, Jhansi, some loose papers inventorized as UPO-02, LP-10, Page No. 1 to 53, in the form of purchase deed of land dated 04.04.2012 situated at Lalitpur for a total consideration of Rs.20,00,000/- were found. During the course of the assessment proceedings, the AO, vide her show-cause notice, required the assessee to furnish his explanation on this issue. In reply, the assessee furnished his explanation that the entire payments for purchase of subject property have been made through account payee cheques out of disclosed sources only. However, the AO verified the payment of Rs.10,00,000/- made through account payee cheque bearing no. 762211 dated 20-05-2012 from the bank statement of the assessee and for the remaining payment of Rs.10,00,000/-, the AO stated that the assessee did not furnish any evidence. Accordingly, the AO made an addition of Rs.10,00,000/- on account of unexplained investment in purchase of land.

18.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. During the course of the appellate proceedings, the assessee submitted that the entire payment consideration of Rs.20,00,000/- has been made by him through account payee cheques which was also evident from the copy of the registered sale deed and the entire purchase consideration towards purchase of agricultural land was duly recorded in the audited financial statements. Before the Id. CIT(A), the assessee submitted that the AO was mistakenly looking for a single payment of Rs. 10,00,000/- in the bank statement of the assessee, whereas, in fact, the assessee had made aggregate payment of Rs.10,00,000/- to Shri Kamal Likhdhari, the seller of the land, in two trenches viz. Rs.3,00,000/- on 07-10- 2011 and Rs. 7,00,000/- on 20-04-2012. The Id. CIT(A) noted that the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 payments made towards purchase of the said property were fully recorded in audited books of account. The Id. CIT(A) also noted that the payments were made through banking channels and the same were also reflected in bank statement placed on record. Accordingly, the Id. CIT(A) deleted the entire addition made by the AO on this count. The Id. CIT(A) has given the relevant findings at para (4.18.1) of his order which are reproduced as under:

"4.18.1 During the course of the appellate proceedings, the appellant submitted that the entire payment consideration of Rs.20,00,000/- has been made by him through account payee cheques which is also evident from the copy of the registered sale deed and the entire purchase consideration towards purchase of agricultural land was duly recorded in the audited financial statements. The appellant further submitted that the AO was mistakenly looking for a single payment of Rs. 10,00,000/- in the bank statement of the appellant, whereas, in fact, the appellant had made aggregate payment of Rs. 10,00,000/- to Shri Kamal Likhdhari, the seller of the land, in two trenches viz. Rs. 3,00,000/- on 07-10-2011 and Rs. 7,00,000/- on 20-04-2012. I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. The payments made toward purchase of the said property are fully recorded in audited books of account. The payments have been made through cheque and the same is also reflected in bank account statement

on record. Thus, in these circumstances, the addition of Rs.10,00,000/- made by the AO is Deleted. Therefore, appeal on these grounds is Allowed."

18.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us.

18.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

18.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

19.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides. We find that the subject addition has been made by the AO on the basis of some sale deed dated 04/04/2012 seized and inventorized as UPO-02, LP-10, Page No. 54 to 58 in respect of some agriculture land at Lalitpur, purchased by the assessee from some Shri Kamal Likhdhari. A copy of such seized sale deed has been filed by the assessee at page no. 148 to 188 of his Paper Book for A.Y. 2011-12. On a perusal of such sale deed, we find that the assessee had purchased some agriculture land Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 admeasuring 0.57 acres situated at Lalitpur from some Shri Kamal Likhdhari for a total consideration of Rs. 20,00,000/-. We note that as per the Sale Deed, out of total consideration of Rs. 20,00,000/-, partial consideration of Rs. 3,00,000/- was paid by the assessee vide cheque no. 503108 dated 07/10/2011 drawn on Bank of Baroda, Rs. 7,00,000/- was paid vide cheque no. 762210 dated 20/04/2012 drawn on Punjab and Sindh Bank and the balance consideration of Rs. 10,00,000/- was paid vide cheque bearing no. 762211 dated 20/05/2015 drawn on Punjab and Sindh Bank. In support of payment through cheque, the assessee has furnished a copy of abstract of his bank statement with Bank of Baroda at page no. 189 of the Paper Book for A.Y. 2011-12 in which the making of payment is clearly visible. Further, from the audited financial statements of the assessee placed at page no. 190 & 191 of the Paper Book for A.Y. 2011-12, we find that in the details of bank accounts, the account of the assessee with Punjab National Bank is also getting reflected. Thus, we find sufficient merit in the contention of the assessee that all the payments towards purchase consideration aggregating to Rs. 20,00,000/- was made by the assessee in three trenches through account payee cheques only which were duly recorded in the audited books of account of the assessee. Thus, we find no infirmity in the action of the Id. CIT(A) in deleting the addition of Rs. 10,00,000/- made by the AO in the assessee's income on account of unexplained investment in purchase of land at Lalitpur for A.Y. 2013-14. Accordingly, the Ground No. 6 of the Revenue for A.Y. 2013-14 is hereby Dismissed.

20. Ground No. 7 of the Revenue for A.Y. 2013-14; Ground No. 4 of the Revenue for A.Y. 2014-15; and Ground No. 9 of the Assessee for A.Y. 2013-14 20.1 Through these Grounds, for the various assessment years, the revenue has challenged the action of the Id. CIT(A) in deleting the addition to the tune of Rs.8,00,000/- out of the total addition of Rs.8,90,000/- and addition of Rs.13,53,960/- made by the AO on account of unaccounted cash payments respectively in A.Y. 2013-14 and A.Y. 2014-15. Further, through the Ground No. 9 for A.Y. 2013-14, the assessee has challenged the action

of the ld. CIT(A) in partially confirming the addition of Rs.90,000/- out of the total addition of Rs.8,90,000/- made for A.Y. 2013-14.

20.2 Briefly stated facts of the issue, as culled out from the records, are that the AO, on the basis of one enhancement letter dated 02.08.2018 issued by the ld. CIT(A)-3, Bhopal in the case of son of the assessee namely Mr. Manish Rai, noted that some loose papers inventorized as Page no. 3, 4 & 13 of BS-01 (Diary) found and seized during the course of search were related to the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 assessee which was also confirmed by the assessee himself through filing an Affidavit. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject issue. The assessee did not make any submission before the AO. Accordingly, the AO made additions of Rs.8,90,000/- and Rs.13,53,960/- respectively for A.Y. 2013-14 and A.Y. 2014-15 on account of unaccounted cash payments in the assessee's income.

20.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The ld. CIT(A) noted that on the basis of subject pages of the seized diary, an enhancement letter dated 02.08.2018 was issued in the case of one of the group assessee namely Shri Manish Rai for enhancement of income of Rs.8,90,000/- and Rs.13,53,960/- respectively in A.Y. 2013-14 and A.Y. 2014-15 and in reply to the enhancement letter, Shri Manish Rai had filed an Affidavit of the assessee stating that the subject jottings in the said diary were pertaining to the assessee only. Before the ld. CIT(A), the assessee claimed that the jotting for a sum of Rs.8,00,000/- pertains to payment made out of the cash sale proceeds of liquor made by him during the course of his regular liquor business. The assessee also claimed that the jotting for a sum of Rs.90,000/- was not pertaining to him but the same was related to his sister concern namely M/s. Regent Beer & Wines Ltd.. Further, in respect of the addition of Rs.13,53,960/- so made for A.Y. 2014-15, the assessee claimed that out of the total amount of Rs.13,53,960/-, the amount of Rs.12,53,962/- does not pertain to any cash payment but the same represented the cash balance on a particular day. Before the ld. CIT(A), the assessee further claimed that the source of the cash balance of Rs.12,53,962/- was only from his regular liquor business and in support of such claim, the assessee produced his regular cash book, as maintained by him in the ordinary course of his business. Further, in respect of the remaining amount of Rs.1,00,000/- for A.Y. 2014-15, the assessee stated before the ld. CIT(A) that such jotting has got misread by the AO as Rs.1,00,000/- instead of the correct jotting for a sum of Rs.10,00,000/-. It was further claimed by the assessee that the said jotting of Rs.10,00,000/- was actually pertaining to a fund transfer through RTGS by him in favour of his sister concern namely M/s. Regent Beer and Wines Ltd. and in support of his contention, the assessee furnished a copy of his relevant bank statement showing the remittance of funds as additional evidence. A copy of such bank statement was forwarded by the ld. CIT(A) to the AO and in response, the AO submitted his remand report dated 16.03.2020 wherein the AO objected the admissibility of the additional evidence by stating Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 that sufficient opportunity was already given to the assessee. Accordingly, after considering the facts and circumstances of the case, the ld. CIT(A) held that the sources of cash payment of Rs.8,00,000/- in A.Y. 2013-14 being out of daily cash sales and the cash balance of Rs.12,53,962/- in A.Y. 2014-15

were duly recorded in the regular books of account of the assessee for the respective years. The Id. CIT(A) further held that the amount of Rs.10,00,000/- was pertaining to a fund transfer through banking channel which was also duly recorded in the assessee's regular books of account. Thus, the Id. CIT(A) deleted the additions to the tune of Rs.8,00,000/- in A.Y. 2013-14 and Rs.13,53,960/- in A.Y. 2014-15. However, according to the Id. CIT(A), in respect of one jotting of Rs.90,000/- pertaining to A.Y. 2013-14, the assessee could not furnish any documentary evidence in support of his contention to the effect that such jotting was pertaining to M/s. Regent Beer and Wines Ltd. and therefore, the Id. CIT(A) confirmed the addition to the extent of Rs.90,000/- for A.Y. 2013-14. The Id. CIT(A) has given the relevant findings at paras (4.29.1) to (4.29.3) of his order which are reproduced as under:

"4.29.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find that on the basis of subject pages of the seized diary, an enhancement letter dated 02.08.2018 was issued in the case of one of the group assessee namely Shri Manish Rai for enhancement of income of Rs.8,90,000/- and Rs.13,53,960/- respectively in A.Y. 2013-14 and A.Y. 2014-15. In reply to the enhancement letter, Shri Manish Rai had filed an Affidavit of the appellant stating that the subject jottings in the said diary were pertaining to the appellant only.

4.29.2 During the course of the appellate proceedings, the appellant has claimed that the jotting for a sum of Rs.8,00,000/- pertains to payment made out of the cash sale proceeds of liquor made by him during the course of his regular liquor business. The appellant also claimed that the jotting for a sum of Rs.90,000/- was not pertaining to him but the same was related to his sister concern namely M/s. Regent Beer & Wines Ltd.. Further, in respect of the addition of Rs.13,53,960/- so made for A.Y. 2014-15, the appellant claimed that out of the total amount of Rs.13,53,960/-, the amount of Rs.12,53,962/- does not pertain to any cash payment but the same represented the cash balance on a particular day. It has been further claimed by the appellant that the source of the cash balance of Rs.12,53,962/- was only from his regular liquor business. In support of his aforesaid contentions, the appellant produced the cash book maintained by him in the regular course of his liquor business and copies of relevant abstracts have also been submitted by the appellant in his Paper Books for A.Y. 2013-14 and A.Y. 2014-15. Further, in respect of the remaining amount of Rs.1,00,000/- for A.Y. 2014-15, the appellant stated that such jotting has got misread by the AO as Rs.1,00,000/- instead of the correct jotting for a sum of Rs.10,00,000/-. It has been claimed by the appellant that the said jotting of Rs.10,00,000/- was actually pertaining to a fund transfer through RTGS by him in favour of his sister concern namely M/s. Regent Beer and Wines Ltd. In support of his contention, the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 appellant furnished a copy of his relevant bank statement showing the remittance of funds as additional evidence. A copy of such bank statement was forwarded by me to the AO vide this office letter dated 24.07.2019. The AO submitted his remand report dated 16.03.2020 wherein the AO has objected the admissibility of the additional evidence

by stating that sufficient opportunity has already been given to the appellant.

4.29.3 I find merit in the contention of the appellant that the sources of cash payment of Rs.8,00,000/- in A.Y. 2013-14 being out of daily cash sales and the cash balance of Rs.12,53,962/- in A.Y. 2014-15 were duly recorded in the regular books of account of the appellant for the respective years. I also find merit in the appellant's contention that the amount of Rs.10,00,000/- was pertaining to a fund transfer through banking channel which was also duly recorded in his regular books of account. Thus, the additions to the tune of Rs.8,00,000/- in A.Y. 2013-14 and Rs.13,53,960/- in A.Y. 2014-15 are Deleted. However, I find that in respect of one jotting of Rs.90,000/- in A.Y. 2013-14, the appellant could not furnish any documentary evidence in support of his contention to the effect that such jotting was pertaining to M/s. Regent Beer and Wines Ltd. and therefore, the addition to the extent of Rs.90,000/- in A.Y. 2013-14 is Confirmed. Therefore, appeal on these grounds is Partly Allowed"

20.4 Aggrieved with the additions deleted by the Id. CIT(A), the revenue is in appeal before us. Whereas, the assessee has preferred an appeal before us agitating the addition of Rs.90,000/- confirmed by the Id. CIT(A) for A.Y. 2013-

14. 20.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

20.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

21.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides. We find that the in the instant case, the subject additions have been made by the AO on the basis of one information passed on by the CIT(A)-3, Bhopal which in its turn was based upon certain loose papers inventorized as Page No. 3, 4 and 13 of BS-01 (Diary) found and seized during the course of the search. The CIT(A)-3 passed on the information while adjudicating the appeals of one of the group assesses namely Shri Manish Rai before him. The CIT(A)-3 found that during the course of the appellate proceedings of Shri Manish Rai, Shri Ramesh Chandra Rai (the assessee in the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 present case) had furnished one Affidavit before him owning the transactions contained in the said seized documents as belonging to himself and as also, one of his group company, namely, Regent Beers and Wines Ltd. On the basis of the information so passed on, the AO made the subject additions in the assessee's income.

21.2 We have gone through the Affidavit duly sworn before Notary Public dated 08/06/2018, given by the assessee before the CIT(A)-3, Bhopal, a copy whereof is placed at page no. 242 of the assessee's Paper Book for A.Y. 2013-

14. On a perusal of such Affidavit, we find that in such Affidavit, the assessee had stated that the transactions contained in the seized documents inventorized as Page No. 3,4 & 13 were pertaining to himself and as also, to one of his companies namely Regent Beer and Wines Ltd. At para (2) of the Affidavit, the assessee has deposed that some transactions in the said loose papers relate to his Badganga Wine Shop. We find that the Xerox copy of the relevant seized document, pertaining to A.Y. 2013-14 has been filed by the assessee at page no. 243 of his Paper Book for A.Y. 2013-14. We find that at such document which is in the nature of some page of a diary dated 12/03/2013, at the right hand side, there is one jotting of a sum of Rs. 8,00,000/- with the name 'Ramchandra' and correspondingly at the left hand side, there are three jottings of Rs. 90,000/-, Rs. 8,00,000/- and Rs. 10,000/- respectively with the narration 'Sandeep', 'Papa' and 'Bhadoria'. We find that such in such loose paper there is no mention of any opening balance or closing balance. We find sufficient merit in the contention of the assessee that the jotting related to Rs. 8,00,000/- pertain to the liquor sales of the assessee from his Badganga Shop which was duly recorded in his regular books of account. We find from the abstract of the cash book of the assessee that as on the relevant date of the jottings i.e. on 12/03/2013 the assessee had recorded sales aggregating to a sum of Rs. 35,00,493/- as his retail liquor sales from various shops. We find that such evidence has not been rebutted by the Id. CIT(DR). However, in respect of the remaining jotting of Rs. 90,000/-, we find that the assessee could not furnish any documentary evidence either before us, or before the authorities below. Thus, we find no infirmity in the action of the Id. CIT(A) in sustaining the addition of Rs. 90,000/- out of the total addition of Rs. 8,90,000/- made by the AO on account of letter of enhancement, in the assessee's income for A.Y. 2013-14. Accordingly, the Ground No. 7 of the Revenue for A.Y. 2013-14 as well as Ground No. 9 of the Assessee for A.Y. 2013-14 are hereby Dismissed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 21.3 Now, coming to the addition of Rs. 13,53,960/- made by the AO in the assessee's income for A.Y. 2014-15 which has been deleted by the Id. CIT(A), we find that such addition has been made by the AO on the basis of Page No. 13 & 14 of one diary seized and inventorized as IDS-04/BS-01. We find that a copy of such seized document has been filed by the assessee at page no. 214 of his Paper Book for A.Y. 2014-15. On a perusal of such diary, which is written for the date 20/06/2013, we find merit in the contention of the assessee that out of the total amount of Rs.13,53,960/-, the amount of Rs.12,53,962/- does not pertain to any cash payment but the same represented the cash balance on a particular day. On examination of the seized page of the diary, we find that at the right hand side, two items are appearing for an aggregate sum of Rs. 12,97,762/- and correspondingly, at the left hand side, one item of Rs. 43,800/- has been mentioned by working out the balance of Rs. 12,53,962/-. Thus, we find that the subject jotting of Rs. 12,53,962/- does not represent any transaction but it is the arithmetical balances of certain transactions carried out on a particular day. We also find substance in the assessee's contention that the source of the cash balance of Rs.12,53,962/- was only from his regular liquor business and in support of such contentions, we find that the assessee has filed a copy of abstract of his regular cash book for the transactions carried out by him on the relevant date i.e. on 20/06/2013 and in such cash book, the opening cash balance and sales for the day are reflecting respectively at Rs. 1,18,88,632/- and Rs. 12,10,690/-. Further, in respect of the remaining amount of Rs.1,00,000/- for A.Y. 2014-15, we find substance in the contention of the assessee that that such jotting has got misread by the AO as Rs.1,00,000/- instead of the correct jotting for a sum of Rs.10,00,000/-. We

also find substance in the contention of the assessee that the said jotting of Rs.10,00,000/- was actually pertaining to a fund transfer through RTGS by him in favour of his sister concern namely M/s. Regent Beer and Wines Ltd. which is duly supported by a copy of relevant bank statement of the assessee as placed at page no. 216 of the assessee's Paper Book for A.Y. 2014-15. We find that the assessee has also filed a copy of the relevant bank statement of Regent Beers and Wines Ltd. at page no. 217 of his Paper Book for A.Y. 2014- 15 in which transfer of funds through RTGS on 20/06/2013 in favour of the company by the assessee is getting clearly reflected. In the light of such findings, we are of the considered view that there was absolutely no justification for the AO to make an addition of Rs. 13,53,960/- in the assessee's income on account of letter of enhancement issued by the CIT(A)-3, Bhopal in the case of some other assessee. Resultantly, the Ground No. 4 of the Revenue for A.Y. 2014-15 is hereby Dismissed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

22. Ground No. 1 of the Revenue for A.Y. 2014-15; Ground No. 2 of the Revenue for A.Y. 2015-16; and Ground No. 3 of the Revenue for A.Y. 2016-17 22.1 Through these grounds for various assessment years, the Revenue has challenged the action of the Id. CIT(A) in deleting the additions of Rs.17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 made by the AO on account of undisclosed interest received from a partnership firm namely M/s. Jai Baba Construction.

22.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the survey operations u/s. 133A of the Act carried out in the hotel premises of the assessee located at Jhansi, loose papers in the form of computerized excel sheets containing summary of some rough working of capital and interest on capital were found and impounded. The AO, from the subject loose papers, noted that the assessee had made capital investment in some partnership firm M/s. Jai Baba Construction in which he was one of the partners and had also derived interest on such capital. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject loose papers. The assessee, in response, made his explanation on the subject issue that the entire investment in the said partnership firm was made by him out of his explained and disclosed sources of income only. The assessee, in respect of the interest on capital, submitted before the AO that the interest amounts so noted on such loose papers were merely rough calculations made by the partners and factually, he had not received any interest of even a single penny from the said firm. The AO, after considering the explanation of the assessee, duly accepted the amount of capital investment in the firm out of explained sources of the assessee. However, in respect of the interest on capital, the AO noted that the assessee could not produce any evidence in respect of non-receipt of interest. Accordingly, the AO made additions of Rs.17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 in the assessee's income on account of undisclosed interest income from M/s. Jai Baba Construction.

22.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences which were also furnished by him before the AO. During the course of the appellate proceedings, before the Id.

CIT(A), the assessee also furnished certain documents, as additional evidences under Rule 46A which were forwarded to the Assessing Officer for Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 comments. The copy of the Remand Report of the AO was provided by the ld. CIT(A) to the assessee and in response, the assessee filed his rejoinder. The Ld. CIT(A), after considering the remand report of the AO as well as the rejoinder of the assessee, observed that the assessee is a partner in the partnership firm M/s. Jai Baba Construction and has made capital investment out of explained source of income. M/s. Jai Baba Construction is a partnership firm which is getting assessed to income tax under PAN - AADFJ3459M and is also filing its returns of income. The ld. CIT(A), from the copy of income tax return and audited financial statements of M/s. Jai Baba Construction for the three financial years viz. F.Y. 2013-14, F.Y. 2014-15 and F.Y. 2015-16 placed on his record, noted that the partnership firm had not claimed payment of any interest on the outstanding balances of partners' capital and thus, had not claimed any deduction u/s. 40(b) of the Act. The ld. CIT(A) further observed that as per the explicit proviso to clause (v) of section 28 of the Act, where any interest, salary, bonus, commission or remuneration which has not been allowed to the partnership firm under s. 40(b), the same shall not be subjected to tax in the hands of any partner, in their individual capacities. According to the ld. CIT(A), the AO, except relying upon the subject loose paper, could not bring any adverse material on record to establish receipt of interest income by the assessee from the partnership firm. The ld. CIT(A) also pointed out that even during the course of remand proceedings, the AO failed to controvert the evidences furnished by the assessee. Thus, the ld. CIT(A) deleted the entire additions of Rs.17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 made by the AO on this count. The relevant findings of the ld. CIT(A) at para (4.20.2) are being reproduced as under:

"4.20.2 I have considered the facts of the case, the Assessment Order, the written as well as oral submissions of the appellant, the remand report of the AO and the counter comments of the appellant. The appellant is a partner in the partnership firm M/s. Jai Baba Construction and has made capital investment out of explained source of income. M/s. Jai Baba Construction is a partnership firm which is getting assessed to income tax under PAN - AADFJ3459M and is also filing its returns of income. On a perusal of the income tax return and audited financial statements of M/s. Jai Baba Construction for the three financial years viz. F.Y. 2013-14, F.Y. 2014-15 and F.Y. 2015-16, the partnership firm had not claimed payment of any interest on the outstanding balances of partners' capital and thus, had not claimed any deduction u/s. 40(b) of the Act. I find merit in the contention of the appellant that as per the explicit proviso to clause (v) of section 28 of the Act, where any interest, salary, bonus, commission or remuneration which has not been allowed to the partnership firm under s. 40(b), the same shall not be subjected to tax in the hands of any partner, in their individual capacities. However, the AO, except relying upon the subject loose Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 paper, could not bring any adverse material on record to establish receipt of interest income by the appellant from the partnership firm. It was further observed that even during the course of remand proceedings, the AO failed to controvert the evidences furnished by the appellant. Thus, I do not find any merit in the action of the AO in making the impugned additions in the appellant's income. Accordingly, the additions

of Rs.17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 are Deleted. Therefore, appeal on these grounds is Allowed."

22.4 Aggrieved with the relief granted by the Id. CIT(A), the revenue is in appeal before us.

22.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

22.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

23.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides, remand report of the AO and Rejoinder of the assessee.

23.2 We find that the assessee is a partner in the partnership firm M/s. Jai Baba Construction and has made capital investment out of explained source of income. M/s. Jai Baba Construction is a partnership firm which is getting assessed to income tax under PAN - AADFJ3459M and is also filing its returns of income. On a perusal of the income tax return and audited financial statements of M/s. Jai Baba Construction for the three financial years viz. F.Y. 2013-14, F.Y. 2014-15 and F.Y. 2015-16, respectively placed in the Paper Books filed by the assessee for A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-17, we find that such partnership firm has not claimed payment of any interest on the outstanding balances of partners' capital and thus, has not claimed any deduction u/s. 40(b) of the Act. We find merit in the contention of the assessee that as per the explicit proviso to clause (v) of section 28 of the Act, where any interest, salary, bonus, commission or remuneration which has not been allowed to the partnership firm under s. 40(b), the same shall not be subjected to tax in the hands of any partner, in their individual capacities. However, we find that in the present case, the AO, except relying upon the subject loose paper, could not bring any adverse material on record to establish receipt of interest income by the assessee from the partnership firm. It was further Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 observed that even during the course of remand proceedings, the AO failed to controvert the evidences furnished by the assessee. Thus, we do not find any infirmity in the action of the Id. CIT(A) in deleting the subject additions of Rs. 17,64,700/- in A.Y. 2014-15, Rs.66,28,363/- in A.Y. 2015-16 and Rs.17,28,790/- in A.Y. 2016-17 made by the AO on account of undisclosed interest income from the partnership firm M/s. Jai Baba Construction. Consequently, the Ground No. 1 of the Revenue for A.Y. 2014-15; Ground No. 2 of the Revenue for A.Y. 2015-16; and Ground No. 3 of the Revenue for A.Y. 2016-17 are hereby Dismissed.

24. Ground No. 4 of the Revenue for A.Y. 2015-16; and Ground Nos. 9(a) & 9(b) of the Assessee for A.Y. 2015-16
24.1 Through the Ground No. 4 for A.Y. 2015-16, the revenue has challenged the action of the Id. CIT(A) in deleting the addition to the tune of Rs.51,00,000/- out of the total addition of Rs.1,27,32,770/- made by the AO on account of undisclosed expenditure on the occasion of son's marriage vide para (19) of her assessment order. Whereas, against the partial upholding of addition to the tune of Rs.76,32,770/- by the Id. CIT(A), the assessee has raised the Ground Nos. 9(a) & 9(b) for A.Y. 2015-16.

24.2 Briefly stated facts of the issue, as emanated from the assessment order, are that the AO, during the course of the survey operations u/s. 133A of the Act carried out in the hotel premises of the assessee at Hotel Ambrosia, Jhansi, some loose papers inventorized as LP-3, Page no. 162 & 163 were found and impounded. The AO, from such loose papers, noted that these loose papers were containing notings in relation to marriage and miscellaneous expenditure incurred by the assessee in the month of February 2015 for solemnizing the marriage of his son. During the course of the assessment proceedings, the AO, vide a show-cause notice, required the assessee to furnish his explanation on the transactions aggregating to a sum of Rs.2,61,52,020/- noted on such loose papers. In reply, the assessee furnished his explanation which has also been reproduced by the AO at para (19.2) on page no. 77 & 78 of the Order. The AO, after partly considering the explanation of the assessee, accepted the transactions to the tune of Rs.1,34,19,250/- as having been incurred by the assessee out of explained sources and made an addition of Rs.1,27,32,770/- on account of undisclosed expenditure on the occasion of son's marriage.

24.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 submissions along with the documentary evidences. The written submission made by the assessee has been reproduced by the Id. CIT(A) at page no. 447 to 451 of his Order. Before the Id. CIT(A), the assessee claimed that out of the total addition of Rs.1,27,32,770/- so made by the AO on account of expenditure on son's marriage, he had actually incurred a sum of Rs.76,32,770/- only and the remaining sum of Rs.51,00,000/- was not actually incurred for marriage expenses. The assessee further submitted that a sum of Rs.51,00,000/- was withdrawn by him from his bank account maintained with UCO Bank, just one day before the date of Tilak Ceremony of his son on 06-02-2015 and in support of his contention, the assessee furnished a copy of the relevant bank statement, showing the cash withdrawals of Rs. 51,00,000/- made on 05-02-2015. The assessee also furnished certain additional evidences in the form of a copy of the relevant abstract of the cash book of the liquor business dated 05-02-2015, showing withdrawals of Rs.51,00,000/- in the name of the assessee and a copy of the relevant abstract of the cash book of the assessee dated 08-02-2015, showing the re-deposition of cash by the assessee in his liquor business. The Id. CIT(A), after considering the remand report and the rejoinder of the assessee on this issue, accepted the contention of the assessee to the extent of Rs.51,00,000/-. However, as regard to the remaining addition of Rs.76,32,770/-, the Id. CIT(A) held that the assessee himself accepted of having incurred expenditure on marriage but could not explain the sources of such expenditure and therefore, out of the total addition of Rs.1,27,32,770/- made by the AO in the assessee's income on this count, the Id. CIT(A) deleted the addition of Rs.51,00,000/- thereby confirming the remaining addition of Rs.76,32,770/- in the hands of the assessee for A.Y. 2015-16. The Id. CIT(A) has given the relevant findings at paras (4.22.1) & (4.22.2) of his order which are reproduced as under:

"4.22.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. During the course of the appellate proceedings, the appellant had claimed that out of the total addition of Rs.1,27,32,770/- so made by the AO on account of expenditure on son's marriage, he had actually incurred a sum of Rs.76,32,770/- only and the remaining sum of

Rs.51,00,000/- was not actually incurred for marriage expenses. It was submitted by the appellant that on 06-02-2015, there was Tilak Ceremony function of the appellant's son namely Shri Manish Rai. The appellant stated that in Jaiswal Community, there is a ritual or practice to showcase fresh notes in the Tilak Ceremony to flaunt the social and financial status of the family to other members of the society. The appellant also demonstrated that for such purpose, he had made cash withdrawal for a sum of Rs.51,00,000/- from his bank account maintained with UCO Bank, Jhansi just a day before the ceremony and the entire cash so withdrawn was the fresh and brand new currency. It was claimed by the appellant that the fresh currency so showcased in the Tilak Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 ceremony was not purported to be handed over to anyone and it was therefore, once the function was over, the same remained with the appellant only and the entire currency was utilized by the appellant, subsequently, in due course of his business of liquor. The appellant, in support of his contention, furnished a copy of the relevant bank statement, showing the cash withdrawals of Rs. 51,00,000/-

made on 05-02-2015. The appellant also furnished certain additional evidences in the form of a copy of the relevant abstract of the cash book of the liquor business dated 05-02-2015, showing withdrawals of Rs. 51,00,000/- in the name of the appellant and a copy of the relevant abstract of the cash book of the appellant dated 08-02-2015, showing the re-deposition of cash by the appellant in his liquor business. A copy of such additional evidences was forwarded to the AO by this Office letter dated 24.07.2019. The AO, in reply, submitted remand report vide letter dated 16.03.2020. The AO, in his Remand Report, objected acceptance of the additional evidences filed during the course of the appellate proceedings by stating that the subject additional evidences were already furnished by the appellant before the AO during the course of the assessment proceedings and no fresh evidence on this issue has been furnished by the appellant to substantiate his claim in respect of the utilization of cash of Rs.51,00,000/-. The remand report of the AO was provided to the appellant for his counter comments. The appellant, in his rejoinder dated 25.06.2020, submitted that the AO has not made any comments on the contents of the additional evidences furnished by the appellant.

4.22.2 I find sufficient merit in the contention of the appellant that for the purpose of utilization of cash of Rs.51,00,000/- as noted on loose paper page no. 163, a cash withdrawal of Rs.51,00,000/- was made by him on 05.02.2015 from his bank account which is clearly evident from the copy of the bank statement furnished by the appellant. Such assertion of the appellant also gets fortified from the loose paper bearing page no. 162 containing the details of receipts on account of son's marriage. The cash withdrawal of Rs.51,00,000/- has also been shown by the appellant in his capital withdrawals. The appellant has duly re-deposited such cash of Rs.51,00,000/- in his regular cash book maintained for liquor business. I also found that the AO has not brought any adverse material on record to prove that the cash of Rs.51,00,000/- was not re-deposited by the appellant in his liquor business but instead was utilized by the appellant for the purpose of son's marriage under any particular head of expenditure. It is practically improbable to believe that such a substantial amount does not contain any specific description. Thus, the contention of the appellant as regard to keeping such cash of Rs.51,00,000/- in the form of fresh notes in his son's Tilak Ceremony appears to be

correct. In absence of any adverse material on record, I do not find any reason to uphold the addition to the extent of Rs.51,00,000/- in the appellant's income on account of unexplained marriage expenditure. However, as regard to the remaining addition of Rs.76,32,770/-, the appellant has himself accepted of having incurred expenditure on marriage and could not explain the sources of such expenditure. Thus, the addition of Rs.76,32,770/- on this count is Confirmed and appellant would get a relief of Rs.51,00,000/-. Therefore, appeal on these grounds is Partly Allowed."

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 24.4 Aggrieved with the addition to the tune of Rs.51,00,000/- deleted by the ld. CIT(A), the revenue is in appeal before us. Whereas, the assessee has preferred an appeal before us agitating the addition of Rs.76,32,770/- confirmed by the ld. CIT(A) for A.Y. 2015-16.

24.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

24.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the ld. CIT(A) and has also filed short hand notes before this Bench.

24.7 Before us, the ld. counsel for the assessee also made an alternate submission that in respect of the unrecorded expenditure to the extent of Rs. 76,32,770/-, the assessee deserves to be granted the benefit of telescoping of income inasmuch, on the date of incurrence of the expenditure, the assessee was having sufficient accumulated amount of share of profit from various syndicates, for various assessment years, as determined by the AO herself.

25.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report and as also, written and oral submissions made from both the sides.

25.2 We find that the subject addition of Rs. 1,27,32,770/- has been made by the AO on the basis of some documents seized/impounded as LP-3, Page 163 from one of the premises of the assessee i.e. from Hotel Ambrosia at Jhansi. We find that copy of such loose paper has been filed by the assessee at page no. 178 of his Paper Book fro A.Y. 2015-16. A copy of such seized document has also been scanned by the AO at page no. 76 of her Order. We find that such seized document is in the form of one handwritten paper in which the details of some expenditure, aggregating to a sum of Rs. 1,27,32,770/-, relating to some marriage have been found noted. We find that in such seized document, on 06/02/2015, an sum of Rs.51,00,000/- has been mentioned. In respect of such item of Rs. 51,00,000/- as found noted in the seized document, we find sufficient merit in the contention of the assessee that on 06-02-2015, there was Tilak Ceremony function of the assessee's son namely Shri Manish Rai. The assessee stated that in Jaiswal Community, there is a ritual or practice to showcase fresh notes in the Tilak Ceremony to flaunt the social and financial status of the family to other members of the society. The assessee also demonstrated that for such purpose, he had made cash withdrawal for a sum Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 of Rs.51,00,000/- from his bank account maintained with UCO Bank, Jhansi just a day before the

ceremony and the entire cash so withdrawn was the fresh and brand new currency. It was claimed by the assessee that the fresh currency so showcased in the Tilak ceremony was not purported to be handed over to anyone and it was therefore, once the function was over, the same remained with the assessee only and the entire currency was utilized by the assessee, subsequently, in due course of his business of liquor. The assessee, in support of his contention, furnished a copy of the relevant statement in respect of his bank account, at page no.182 & 183 of his Paper Book for A.Y. 2015-16, showing the cash withdrawals of Rs. 51,00,000/- made on 05/02/2015. We find that a copy of such bank statement was also forwarded by the Id. CIT(A) to the AO for his comments but, the AO except objecting admission of such statement as additional evidence, did not make any adverse comment either on the submission of the assessee on this count or the bank statement. From the relevant abstract of the regular cash book of the assessee maintained by him in his regular course of liquor business, as of 05/02/2015 and 08/02/2015, as placed at page no. 184 & 185 of the assessee's Paper Book for A.Y. 2015-16, we find that as on 05/02/2015, in the regular cash book receipt amounting to Rs. 51,00,000/- by way of cash withdrawals from UCO Bank has been shown and on the same date, the account of the assessee has been debited for the same amount showing the withdrawals of Rs. 51,00,000/- made by the assessee from his capital account with his proprietorship concern. Again on 08/02/2015, from the copy of the abstract of cash book placed at page no. 185 of the Paper Book, we find that again the credit for the aforesaid sum of Rs. 51,00,000/- has been given to the assessee upon his re-deposition of cash in the proprietorship concern. We find that neither the AO in his remand report, nor the Id. CIT(DR) could controvert the trueness of such entries made in the regular books of account of the assessee. Thus, we find absolutely no infirmity in the action of the Id. CIT(A) in deleting the addition to the extent of Rs. 51,00,000/- on this count from the assessee's income for A.Y. 2015-16. Consequently, the Ground No. 4 of the Revenue for A.Y. 2015-16 is hereby Dismissed.

25.3 Now, we would take up the assessee's appeal against maintaining the addition to the extent of Rs. 76,32,770/- by the Id. CIT(A) on account of marriage expenses. We find that the subject document was seized from the premises relating to the assessee only and further, some of the contents of such seized document has also been admitted by the assessee and even found recorded in his regular books of account and therefore, there cannot be raised any doubt against the evidentiary value of the seized document. Since, in the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 seized document there is a clear mention of incurrence of expenditure to the extent of Rs. 1,27,32,770/- out of which only a sum of Rs. 51,00,000/- was found recorded in the regular books of account of the assessee, the remaining expenditure of Rs. 76,32,770/- remained unrecorded as rightly determined by the Id. CIT(A).

25.4 Having given our findings as regard to the making of unrecorded expenditure to the extent of Rs. 76,32,770/- incurred by the assessee for solemnizing the marriage of his son, as aforesaid, now, we have to consider the plea taken by the assessee before us to the effect that even if it is held that the assessee had incurred some expenditure which remained unrecorded in his regular books of account, then also, no addition can be made in his income for the reason that although the payments were unrecorded, but, the sources of such payments were out of the disclosed sources. It was contended by the counsel of the assessee that in the case of the assessee, the AO has given a clear finding that the assessee had derived share of profit, as a member, from various liquor syndicates, in

various assessment years. It was demonstrated that as per the AO's own finding for A.Y. 2015-16, the assessee had derived share of profit from the various syndicates amounting to Rs. 2,98,26,290/- (Net of share in loss at Rs. 1,20,931/-) as per the details given the AO at para (14.10) at page no. 51 & 52 of the assessment order. The assessee's counsel contended before us that since such profit has been determined by the AO herself for making addition in the hands of the assessee, the benefit of telescoping against such income should be given to the assessee. We find that although on the theory of share of profit for each assessment year only no credit for telescoping can be given to the assessee for the very reason that as against such profit, the AO herself while determining the undisclosed investment of the assessee has given due credit. We find that the AO has given one table titled as 'MS-1' at para (14.10) at page no. 50 of her Assessment Order. We find that although, according to the AO, such table was submitted to her by the assessee, but, as per the findings given by the AO herself, at last para of page no. 50, the submission of the assessee was found correct. We find that on the basis of this table only, the AO has made an addition of Rs. 74,80,454/- in the assessee's income for A.Y. 2014-15 on account of unexplained capital investment in syndicate. It is therefore, instead of going by the theory of profit for every year, we would place our reliance on the aforesaid table titled as 'MS-1'. From such table, we find that after considering the share of profit of the assessee for each of the assessment years, amount of fresh investment towards capital in the various syndicates and amount of withdrawals from the capital of such syndicates, in the last column no. 8, the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 amount of fresh capital invested has been reflected and since, all these figures are in negative, it has been interpreted that in the concerning assessment years, the assessee had not made fresh investments, but, rather made over withdrawals from the capital in various syndicates. We find that as per the Table MS-1, as on 31/03/2014, a fund amounting to Rs. 7,26,99,684/- was available with the assessee in the form of accumulated sum of withdrawals from the capital of various syndicates, which in its turn, got either built up by the assessee's own investment or his share in profit from the syndicates. However, we are conscious of the fact that on the similar reasoning, while adjudicating the various grounds of the assessee raised vide Ground Nos. 9(a) & 9(b) for A.Y. 2012-13; Ground Nos. 10(a) & 10(b) for A.Y. 2013-14; Ground Nos. 8(a) & 8(b) for A.Y. 2014-15; and Ground Nos. 11(a) & 11(b) for A.Y. 2016-17, we have already granted the benefit of telescoping of income to the assessee. Therefore, for the purpose of examining the claim of the assessee, we will have to re-draw the table of availability of funds in the hands of the assessee during the relevant period of incurrence of the subject expenditure of Rs. 76,32,770/- which has been done, as under.

A.Y.	Cumulative funds available at the end of the relevant F.Y. as per Table MS-01 at page no. 50 of the AO's Order	Utilization of the funds out of the cumulative funds being investment in the purchase of the land in subsequent financial year	Utilization of the funds out of the cumulative funds for marriage expenditure	Cumulative adjustment given for utilization of funds	Re-casted Cumulative funds available at the end of the relevant F.Y. giving effect to cumulative adjustment
[1]	[2]	[3]	[4]	[5 = 3+4]	[6 = 2

2011-12	69,98,079	35,10,000	-	35,10,000	34,88,0
2012-13	2,39,48,064	77,28,310	-	1,12,38,310	1,27,09,
2013-14	5,68,75,621	4,00,000	-	1,16,38,310	4,52,37,
2015-16	10,48,91,767	2,00,000	76,32,770	1,94,71,080	8,54,20,

25.5 Thus, we find that even after considering the benefit of telescoping already given to the assessee for explaining the source of his investment in purchase of land, at the relevant time, the assessee was having sufficient accumulated funds in the form of share of profit from various syndicates and which was undisputedly available to the assessee for explaining his unrecorded investment/expenditure.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 25.6 We are of the considered view that although the share of profit of the assessee from various syndicates are not chargeable to tax in view of the provisions of s. 86 r.w.s. 67A and 167B of the Act, but, at the same time, we are of the view that although such profit was not taxable, but, once it is established that such profit was withdrawn by the assessee from the syndicates and even after considering fresh investment in the syndicates, there remained accumulated balance of share of profit in the hands of the assessee, then, the funds generated through some accumulated profit will have to be necessarily taken as the explained sources for making any investment or for incurring any expenditure. From the table given above, it is evident that even after considering the unrecorded investment in the land and as also, marriage expenditure, the ample of funds remained available in the hands of the assessee for making utilization thereof. In our considered view, the provisions of s. 69, 69A, 69B and s. 69C contemplate the investments or the expenditure the sources whereof remained unexplained and it does not contemplate deeming any income on the sole basis of recording or non-recording of any expenditure or investment in the books of account. Although, in the instant case, certain payments made by the assessee for incurrence of marriage expenditure remained unrecorded in his regular books of accounts, but, such fact alone cannot be a basis for making the addition if the assessee is in a position to demonstrate the sources of incurring such expenditure and in respect of such sources of expenditure, the assessing officer has already made additions. In our considered view, although the income from the syndicates remained exempted in the hands of the assessee because of the operation of the law, but, at any rate, the credit for such income deserves to be given to the assessee for explaining the sources of other investments or expenditure. Thus, on the theory of telescoping for which the assessee is legally entitled to, we find no merit in the action of the Id. CIT(A) in sustaining the addition to the extent of 76,32,770/- in A.Y. 2015-16, towards the unexplained marriage expenses. Accordingly, such additions of Rs. 76,32,770/- are also directed to be deleted. Resultantly, the Ground No. 9(a) and 9(b) of the Assessee for A.Y. 2015-16 are hereby Allowed.

26. Ground No. 1 of the Revenue for A.Y. 2016-17 26.1 Through the Ground No. 1, for the A.Y. 2016-17, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs.14,46,530/- made by the AO on account of unexplained cash found during the course of search.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 26.2 Briefly stated facts of the issue, as

culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the office premises of the assessee situated at 7, Chetak Arc, M.G. Road, Indore, cash amounting to Rs.14,46,530/- was found. During the course of the assessment proceedings, the AO required the assessee to furnish explanation on the sources of the cash so found. The assessee furnished his explanation on the subject issue which has also been reproduced by the AO at para (13.3) on page no. 17 to 19 of the Order. The assessee claimed that the source of the aforesaid cash of Rs.14,46,530/- was out of the cash balance available as per the regular cash book of the assessee maintained by him in day to day course of his liquor business. The AO discarded and disregarded such explanation of the AO and accordingly, an addition of Rs.14,46,530/- on account of unexplained cash has been made in the assessee's income.

26.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Ld. CIT(A) observed that the sources of cash of Rs.14,46,530/- found from the office premises of the assessee situated at Indore were out of the cash available with the assessee as on 06-01-2016. According to the Id. CIT(A), such cash was available with the assessee in the regular course of his liquor business which was evident from the regular cash book produced by the assessee before him as well as before the AO during the course of the assessment proceedings. Accordingly, the Id. CIT(A) deleted the entire addition of Rs.14,46,530/- made by the AO on this count. The Id. CIT(A) has given the relevant findings at para (4.23.1) of his order which are reproduced as under:

"4.23.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find merit in the contention of the appellant that the sources of cash of Rs.14,46,530/- found from the office premises of the appellant situated at Indore were out of the cash available with the appellant as on 06-01-2016. I found substance in the appellant's submission that such cash was available with him in the regular course of his liquor business. On perusal of copy of regular cash book it was observed that appellant was having sufficient cash in hand as on 06.01.2016. the appellant has also contended that the cash book was also produced before the AO during the course of the assessment proceedings. In such circumstances, the appellant could explain the sources of cash found from his possession and therefore, no addition on this ground was warranted. Thus, addition made by the AO amounting to Rs.14,46,530/- is Deleted. Therefore, appeal on this ground is Allowed."

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 26.4 Aggrieved with the addition deleted by the Id. CIT(A), the revenue is in appeal before us.

26.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

26.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

27.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides. Upon overall consideration, we find full substance in the contention of the assessee. We find that the assessee is carrying out the business of retail liquor sales in which sales are normally made against cash only. On a perusal of the audited financial statements of the assessee placed at page no. 109 to 125 of the Paper Book for A.Y. 2016-17, we find that for the previous year relevant to the assessment year 2016-17, the assessee has shown Sales amounting to Rs. 72,21,75,040/- and as per the abstract of the regular cash book of the assessee, as placed at page no. 197 of the Paper Book for A.Y. 2016-17 filed by the assessee, the assessee was having cash balance amounting to Rs.14,46,530/-. We find that even in the audited balance sheet of the assessee as of 31/03/2016, the assessee had shown cash balance amounting to Rs. 82,29,737/-. In such circumstances, the claim of the assessee regarding availability of the cash balance of Rs. 14,46,530/- as per his regular cash book cannot be doubted. In such circumstances, the cash amount of Rs. 14,46,530/- cannot be regarded as the unexplained money of the assessee. Thus, we find no infirmity in the action of the Id. CIT(A) in deleting the addition of Rs. 14,46,530/- made by the AO in the assessee's income on account of unexplained cash found and seized. Accordingly, the Ground No. 1 of the Revenue for A.Y. 2016-17 is hereby Dismissed.

28. Ground No. 4 of the Revenue and Ground Nos. 10(a) to 10(d) of the Assessee for A.Y. 2016-17
 28.1 Through the ground no.4, the revenue has challenged the action of the Id. CIT(A) in deleting the addition to the extent of Rs.2,34,00,000/- out of the total addition of Rs.3,05,00,000/- made by the AO on account of undisclosed investment of shares of M/s. Agrawal Distilleries Pvt. Ltd. in A.Y. 2016-17. For Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 the addition sustained by the Id. CIT(A) to the tune of Rs.71,00,000/-, the assessee has raised Ground Nos. 10(a) to 10(d) in his appeal for A.Y. 2016-17.

28.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the survey operations carried out under s.133A of the Act in the premises of M/s. Hotel Ambrosia, Nanak Ganj, Jhansi belonging to the assessee, some incriminating documents inventorized as LP-1, backside of Page-29, were found and impounded. The scanned copy of the seized document has been reproduced by the AO at page no. 69 of her Order. From such loose paper, the AO noted that the assessee had made investment of Rs.5,85,00,000/- in shares of one company namely M/s. Agrawal Distilleries Pvt. Ltd. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject issue. The assessee furnished his explanation which has also been reproduced by the AO at para (17.1) on page no. 69 to 71 of the impugned Order. The assessee claimed that since the subject loose paper had neither been prepared by him or on his instructions and therefore, no adverse inference could have been drawn against him on the basis of such loose paper. The assessee further contended that as against the notings made on the subject loose paper for 20% shareholding to be bought by the assessee in the said company for a total consideration of Rs.5,85,00,000/-, the assessee had actually made an investment only in respect of 12% shares of the said company and even if the amounts noted in the said loose paper are taken to be correct, then too, as per pro-rata consideration, investment of the assessee at the most be considered to be at Rs.3,51,00,000/- only. The assessee further claimed that since he had already shown an amount of Rs.2,80,00,000/- having been made through banking channels and duly

recorded in his books of account, only the addition to the extent of Rs.71,00,000/- could have been made in the hands of the assessee on this count. The AO, after partly considering the submission of the assessee, granted a credit of Rs.2,80,00,000/- as shown by the assessee in his books of accounts but, did not accept the claim of the assessee for having invested in only 12% shares of the said company in place of 20% as noted in the subject loose paper. Accordingly, after giving credit of Rs.2,80,00,000/- from the total investment of Rs.5,85,00,000/- found noted on the said loose paper, the AO made an addition of Rs.3,05,00,000/- in the hands of the assessee on account of unexplained investment in purchase of shares of the company.

28.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 submissions along with the documentary evidences which were also furnished by him before the AO. The Id. CIT(A) while upholding the evidentiary value of the seized document, accepted the contention of the assessee to the effect that as against the mentioning of acquisition of 20% share in the company M/s. Agrawal Distilleries Pvt. Ltd., factually the assessee had purchased only 12% shares of the said company. Accordingly, the Id. CIT(A), firstly by proportionately reducing the alleged amount of investment, as mentioned in the same loose paper, from Rs.5,85,00,000/- to Rs.3,51,00,000/-, and secondly, after granting the credit for investment aggregating to Rs.2,80,00,000/- which were duly recorded in the books of the assessee, confirmed the addition for the remaining sum of Rs. 71,00,000/- which resulted into relief of a sum of Rs.2,34,00,000/- to the assessee. The relevant findings given by the Id. CIT(A) vide para (4.24.1) at page no. 466 to 468 of his Order are reproduced as under:

"4.24.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. As regard to the evidentiary value of the loose paper, I am in full agreement with the findings given by the AO in the body of the assessment order that authenticity of the incriminating seized loose paper cannot be doubted. It is undisputed fact that the subject seized paper was impounded from the business premises of Hotel Ambrosia, Jhansi, a concern of which the appellant was the Proprietor. It is also clear from the subject loose paper that the appellant along with other three persons, have made investment for purchases of some shares in a company named and titled as M/s. Agrawal Distilleries Pvt. Ltd., the name whereof has clearly been mentioned in the subject seized document. Since, the document was found from the appellant himself, its evidential value cannot be doubted. On a perusal of such loose paper, it transpires that the appellant had purchased 20% shares in the above named company for a total consideration of Rs. 5,85,00,000/- and out of such consideration, a sum of Rs.2,80,00,000/- was required to be paid in the form of cheque and the remaining sum of Rs.3,05,00,000/- was required to be paid in cash. The appellant has admitted to have made payment of Rs.2,80,00,000/- through cheques and has also recorded such payments in his books of accounts. However, the appellant is denying to have made payment of cash consideration of Rs. 3,05,00,000/- which is not acceptable. Any document has to be read in its entirety and it cannot be presumed that the appellant has made the

payment of cheque portion, as noted down in the excel sheet but has not made payment of any single penny in cash as noted down in the same excel sheet. Thus, I find no substance in the appellant's submission that he had not made any payment in cash towards purchase of shares. However, I find sufficient merit in the contention of the appellant that originally he had agreed for making investment for purchase of 20% shares in the above named Agrawal Distilleries Pvt. Ltd., but actually, such investment could take place only in respect of 12% of the shares of the above named company, as is evident from the Audited Balance Sheet of M/s. Agrawal Distilleries Pvt. Ltd. for the financial year ended on 31.03.2015 in which the total Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 number of shares in the name of the appellant has been shown only at 12% of the total paid up capital of the company. So it has to be necessarily held that as against the total amount of investment by the appellant in purchase of shares of Agrawal Distilleries Pvt. Ltd., as stated in the said excel sheet at Rs. 5,85,00,000/- for 20% share has to be proportionately scaled down to Rs. 3,51,00,000/- only for 12% shares. In view of such position, the appellant had made investment to the extent of Rs. 3,51,00,000/- only in purchase of 12% shares in M/s. Agrawal Distilleries Pvt. Ltd. out of which a sum of Rs. 2,80,00,000/- was paid by the appellant through banking channels and out of his explained sources and therefore, the sources of the balance investment of Rs. 71,00,000/- remained unexplained and is Confirmed and appellant gets relief of Rs. 2,80,00,000/-. Therefore, appeal on these ground is Partly Allowed."

28.4 Aggrieved with the relief granted by the ld. CIT(A), the revenue is in appeal before us and against the addition confirmed by the ld. CIT(A), the assessee has preferred a cross appeal before us.

28.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

28.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the ld. CIT(A) and has also filed short hand notes before this Bench.

28.7 Before us, the ld. counsel of the assessee, in addition to relying upon his written submissions, had raised an alternate plea that first of all the assessee had not made unexplained investment in acquisition of share of M/s. Agrawal Distilleries Private Limited (in short ADPL), as has been alleged by the AO, but, even otherwise, if it is presumed that the assessee had made unexplained investment to the extent of Rs. 71,00,000/- as held by the ld. CIT(A) then also, the investment not having been made during the previous year relevant to A.Y. 2016-17, no addition was warranted on this count.

28.8 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides. We have carefully gone through the subject loose paper seized from the premises of the assessee, inventorised as Page - 29, (UPO-2) LP-1, placed at Page No. 170

of the Paper Book filed by the assessee for A.Y. 2016-17. A copy of such loose paper has also been scanned by the AO herself at page no. 69 of her Assessment Order. We find that such loose paper is in the form of a computerized excel sheet with the title 'Agrawal Distillaries Private Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Limited' and heading 'Investment Details'. We find that such excel sheet contains many columns with the headings 'Name', 'Share', 'Amount Paid', 'Total Amount to Pay', 'Balance to Pay', 'Remarks' etc. We further find that in the said excel sheet, at the third serial no. the name of the assessee along with his share ratio of 20% is getting clearly reflected. However, we find full merit in the contention of the assessee that initially he had agreed for making investment for purchase of 20% shares of ADPL but, afterwards, he could only make investment upto 12% of the shares of ADPL. Upon going through the Audited Financial Statements of ADPL for the F.Y. 2014-15, placed at page no. 174 to 194 of the assessee's Paper Book for A.Y. 2016-17, and particularly upon going through the Schedule 2 of the Share Capital at page no. 183, we find that the paid up share capital of the ADPL, as on 31/03/2015 comprises of 40,034 equity shares of Face Value of Rs. 100/- each thereby totaling to Rs. 40,03,400/- and out of such paid up capital the ADPL has shown the shareholding of the assessee in respect of 4,804 equity shares, as on 31/03/2015, which works out to be 12% only. Further, upon going through the reply of the assessee filed before the AO, scanned by the AO herself at page no. 69 to 71 of the assessment order, we find that the assessee has made the investment in 12% shares of the ADPL for a total consideration of Rs.2,80,00,000/- and that too, through banking channels only. We find that the AO has merely relied upon the subject loose paper without conducting any further inquiry and without bringing any other corroborative evidence to her rescue. The Id. CIT(DR) could also not bring on record any facts or evidences to controvert the assertion made by the assessee in this behalf. Thus, in light of the aforesaid, we find full merit in the contention of the assessee that he had only made investment in 12% of shares of ADPL and not 20% as alleged by the AO. From the seized excel sheet for making an investment of 20% in shares of ADPL, the assessee was required to make an investment of Rs. 5,85,00,000/-, either by way of cash or cheque and since, as against such 20%, the assessee has only acquired 12% share, the assessee's share of investment will have to be re-computed on pro-rata basis which works out to be at Rs.3,51,00,000/- and since, as per the AO's own finding, the assessee had found to have made investments to the extent of Rs. 2,80,00,000/- through banking channels, the balance amount of the investment i.e. Rs. 71,00,000/- remained unexplained and therefore, such amount of unexplained investment was rightly determined by the Id. CIT(A).

28.9 However, as regard to the year of making of the aforesaid amount of unexplained investment by the assessee, we find that during the previous year relevant to the assessment year under consideration, since, the assessee had Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 not purchased any shares of ADPL therefore, no addition qua the investment made in shares of ADPL can be subjected to tax during the relevant assessment year. On careful examination of the Audited Financial Statement of the ADPL, as placed at page no. 183 of the assessee's Paper Book for A.Y. 2016-17, we find that as per such balance sheet, the assessee had become shareholder in the ADPL holding 12% share in the company. We find that the assessee had purchased such shares from one company named as Vivashwan Hotels India Pvt. Ltd. and in the audited financial statements of the assessee for the F.Y. 2014-15, the said investment of Rs. 2,80,00,000/- is getting reflected. Thus, it is evident that the assessee had made the entire disclosed investment during the financial year 2014-15 only. From the copy of the relevant bank statements of the assessee for the financial year

2014-15, placed at page no. 172 & 173 of the assessee's Paper Book for A.Y. 2016-17, we also find that the assessee had made the payments through banking channels during such financial year only. We find that in the seized document, there is no mention of any date or period, so logically, in absence of any other contradictory material, it has to be inferred that the undisclosed investment was also made in the same year in which the disclosed investment was made. Before us, the Id. CIT(DR) could not controvert the various documentary evidences furnished by the assessee in his Paper Book. In such circumstances, we are inclined to hold that the assessee had not made any investment in the shares of ADPL during the financial year 2015-16 relevant to A.Y. 2016-17 and therefore, the addition having been made by the AO in a wrong year, is not sustainable in the eyes of the law. Accordingly, we are inclined to hold that during the previous year relevant to assessment year 2016-17, the assessee had not made any unexplained or unaccounted investment in purchase of shares of ADPL and therefore, no addition of any amount was warranted in the assessee's income for A.Y. 2016-17 on this count. Accordingly, in our considered view, the Id. CIT(A) was not justified in confirming addition even to the extent of Rs. 71,00,000/- in the income of the assessee for A.Y. 2016-17 out of the total addition of Rs. 3,05,00,000/- made by the AO on this count. Consequently, the Ground No. 4 of the Revenue for A.Y. 2016-17 is hereby Dismissed whereas, the Ground Nos. 10(a) to 10(d) of the Assessee for A.Y. 2016-17 are Allowed.

29. Ground No. 6 of the Revenue for A.Y. 2016-17 29.1 Through the Ground No. 6 for the A.Y. 2016-17, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 Rs.11,00,000/- made by the AO on account of undisclosed income by way of commission from some Geda Ji against sale of share in Jhokanbagh site.

29.2 Briefly stated facts of the issue, as emerging out from the assessment order, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the premises of a third person namely Shri J.P. Gupta situated at Jhansi (U.P.), one loose paper inventorized as UPO-01, LP-1, Page no. 13 was found and seized. The AO, from such loose paper, noted that it was containing jottings for receipt of a sum of Rs.11,00,000/- by the assessee from Shri Geda Ji against sale of share in Jokhanbag Site. During the course of the assessment proceedings, the AO vide a show-cause notice, required the assessee to make his explanation on the subject loose paper. In reply, the assessee claimed that such loose paper was neither found from his possession nor it was prepared on his instruction and the same was neither in his handwriting nor contained his signature and thus, no adverse inference could be drawn against him u/s. 292C of the Act. The assessee further claimed that he was not having any property in Jokhanbag Site. However, the AO, by rejecting the explanation of the assessee, made an addition of Rs.11,00,000/- on account of undisclosed income of the assessee from some Geda Ji against sale of share in Jhokanbagh site.

29.3 Aggrieved with the Order of Assessment, the assessee preferred appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences, which has been reproduced by the Id. CIT(A) at para (4.26) of his Order. The Ld. CIT(A) observed that the subject loose paper was not found from the premises of the assessee but the same was found from the premises of some other person being Shri J.P. Gupta. According to the Id. CIT(A), the AO did

neither make any enquiry from Shri J.P. Gupta regarding contents of the loose paper nor enquired anything regarding identity of Shri Geda Ji. Further, as per the Id. CIT(A), the AO had not brought any corroborative adverse material on record which could prove the receipt of Rs.11,00,000/- by the assessee. The Id. CIT(A) also noted that the jottings made on such loose paper were made in English language and it contained signatures of two persons in English and the assessee is an under-literate person who cannot make his signature in English. Further, the Id. CIT(A) observed that during the course of the search operations, in the various premises of the assessee, not a single document or loose paper was found evidencing receipt of the alleged sum of Rs.11,00,000/- from some Mr. Geda. The Id. CIT(A) also noted that the AO could not bring on record evidencing Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 transfer of any portion of property situated at Jokhanbag which could have been either in the form of agreement to sale coupled with possession or a sale deed. Accordingly, in absence of any corroborative material on record, the Id. CIT(A) deleted the entire addition of Rs.11,00,000/- made by the AO on this count. The Id. CIT(A) has given the relevant findings at para (4.26.1) of his order which are reproduced as under:

"4.26.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find that the subject loose paper was not found from the premises of the appellant but the same was found from the premises of some other person being Shri J.P. Gupta. In my considered view, the AO ought to have made necessary enquiries regarding the jottings made on the subject loose paper from the person from whose possession such loose paper was found. The AO did neither make any such enquiry from Shri J.P. Gupta regarding contents of the loose paper nor enquired anything regarding identity of Shri Geda Ji. I also find that the AO had not brought any corroborative adverse material on record which could prove the receipt of Rs.11,00,000/- by the appellant. In my considered view, without making necessary enquiries from the concerned person from whom the subject loose paper was seized, no presumption under the provisions of s.292C of the Act could be drawn against the appellant. I also find that the jottings made on such loose paper were made in English language and it contained signatures of two persons in English. I find that the appellant is an under-literate person who cannot make his signature in English. Thus, the appellant was able to demonstrate that such loose paper was not bearing his signature. Further, during the course of the search operations, in the various premises of the appellant, not a single document or loose paper was found evidencing receipt of the alleged sum of Rs.11,00,000/- from some Mr. Geda. Also the AO could not bring on record evidencing transfer of any portion of property situated at Jokhanbag which could have been either in the form of agreement to sale coupled with possession or a sale deed. In my considered opinion, even if it is presumed that the appellant was in receipt of a sum of Rs.11,00,000/- against release of 2% share in the land at Jokhanbag, the same would only partake character of an advance unless and until it is proved by any positive material on record that against such receipt, any transfer of property as contemplated under s.45 read with section 2(47) had taken place by the appellant in favour of Mr. Geda or anyone else. In these circumstances, in absence of any corroborative material on record, I do not find any reason to uphold the addition so made by the AO. Accordingly, the addition of

Rs.11,00,000/- is Deleted. Therefore, appeal on this ground is Allowed."

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 29.4 Aggrieved with the addition deleted by the Id. CIT(A), the revenue is in appeal before us.

29.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

29.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

30.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides.

30.2 We find that the AO has made the addition on the basis of one handwritten paper seized from the premises of some third person namely Shri J.P. Gupta from his premises situated at Indore. Such loose paper has been scanned by the AO herself at page no. 90 of the assessment order. First of all, we find that the subject loose paper was not found from the premises of the assessee but the same was found from the premises of some other person being Shri J.P. Gupta. In our considered view, the AO ought to have made necessary enquiries regarding the jottings made on the subject loose paper from the person from whose possession such loose paper was found. We also find that the AO did neither make any such enquiry from Shri J.P. Gupta regarding contents of the loose paper nor enquired anything regarding identity of Shri Geda Ji. We further find that the AO had not brought any corroborative adverse material on record which could prove the receipt of Rs.11,00,000/- by the assessee. In our considered view, without making necessary enquiries from the concerned person from whom the subject loose paper was seized, no presumption under the provisions of s.292C of the Act could have been drawn against the assessee. We also find that during the course of the search operations, in the various premises of the assessee, not a single document or loose paper was found evidencing receipt of the alleged sum of Rs.11,00,000/- from some Mr. Geda. Furthermore, the AO could not bring on record evidencing transfer of any portion of property situated at Jokhanbag which could have been either in the form of agreement to sale coupled with possession or a sale deed. We are in agreement with the findings of the Id. CIT(A) that even if it is presumed that the assessee was in receipt of a sum of Rs.11,00,000/- against release of 2% share in the land at Jokhanbag, the same Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 would only partake character of an advance unless and until it is proved by any positive material on record that against such receipt, any transfer of property as contemplated under s.45 read with section 2(47) had taken place by the assessee in favour of Mr. Geda or anyone else. In these circumstances, in absence of any corroborative material on record, we do not find any infirmity in the action of the Id. CIT(A) in deleting the addition of Rs. 11,00,000/- from the income of the assessee for A.Y. 2016-17 on this count. Resultantly, the Ground No. 6 of the Revenue for A.Y. 2016-17 is hereby Dismissed.

31. Ground No. 8 of the Revenue for A.Y. 2016-17 31.1 Through the Ground No. 8 for the A.Y. 2016-17, the revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs.9,23,800/- made by the AO on account of unexplained cash found during the course of search in bank locker.

31.2 Briefly stated facts of the issue, as emerging out from the assessment order, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the bank lockers maintained in the name of Smt. Manu Rai and Smt. Meena Rai, cash amounting to Rs.9,23,800/- was found. During the course of the assessment proceedings, the AO noted that Mrs. Manu Rai and Mrs. Meena Rai, in their statements recorded on oath, stated that the cash so found in the bank lockers amounting to Rs.7,73,800/- and Rs.1,50,000/- thereby aggregating to Rs.9,23,800/-, was pertaining to the assessee. Accordingly, the AO required the assessee to furnish explanation on the sources of the cash so found. The assessee had not furnished any explanation before the AO. Accordingly, the AO made an addition of Rs.9,23,800/- on account of unexplained cash found in the assessee's income.

31.3 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Id. CIT(A) observed that the sources of cash of Rs.9,23,800/- found from the office premises of the assessee situated at Indore were out of the cash available with the assessee as on 06-01-2016. According to the Id. CIT(A), such cash was available with the assessee in the regular course of his liquor business which was evident from the regular cash book produced by the assessee before him as well as before the AO during the course of the assessment proceedings. Accordingly, the Id. CIT(A) deleted the entire addition of Rs.9,23,800/- made by the AO on this Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 count. The Id. CIT(A) has given the relevant findings at para (4.28.1) of his order which are reproduced as under:

"4.28.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find merit in the contention of the appellant that the sources of cash of Rs.9,23,800/- found from the bank lockers of the family members of the appellant were out of the cash available with the appellant as on 06-01-2016. I found substance in the appellant's submission that such cash was available with him in the regular course of his liquor business. I have verified such fact from the copy of the regular cash book produced before me. It was submitted that such cash book was also produced before the AO during the course of the assessment proceedings. I found that the AO could not controvert such fact and has also not brought on record utilization of the cash so available with the appellant for any other purpose. In such circumstances, the appellant could explain the sources of cash found from his possession and therefore, no addition on this ground was warranted. Accordingly, addition of Rs.9,23,800/- made by the AO on account of unexplained cash is Deleted. Therefore, appeal on this ground is Allowed."

31.4 Aggrieved with the addition deleted by the Id. CIT(A), the revenue is in appeal before us.

31.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO on this issue.

31.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

32.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides. In our considered view, although, the addition of Rs. 9,23,800/- made by the AO was not sustainable but, at the same time, we find that the reasoning given by the Id. CIT(A) in his Order is not factually correct. We find that the Id. CIT(A) has deleted the addition on account of cash found in the lockers of the family members of the assessee on the ground that the assessee was having sufficient cash balance as per his regular cash book maintained in respect of his liquor business. However, we find that besides finding the aforesaid cash of Rs. 9,23,800/-, cash amounting to Rs. 14,46,530/- was also found at the office premises of the assessee. We find that as per the regular cash book of the assessee, as on the date of search, the assessee was having cash balance amounting to Rs. 14,46,530/- and the same Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 was found at his office premises as aforesaid. Thus, the sources for the cash found in the lockers of the assessee could not be the regular cash balance available with the assessee. However, we find force in the contention of the assessee that sources of such cash can also be considered as explained out of the accumulated share of profit of the assessee in various syndicates which has been determined by the AO herself. We find that there would remain sizeable amount of funds in the hands of the assessee even after giving benefit of telescoping on other grounds adjudicated by us in the preceding paras and therefore, on the theory of telescoping, we are inclined to hold that the sources of cash found in the lockers of the family members of the assessee were out of the explained sources only and therefore, no addition on this count was warranted. Accordingly, the Ground No. 8 of the Department is hereby Dismissed.

33. Ground Nos. 1(a), 1(b), 2(a) & 2(b) of the Assessee for A.Y. 2010-11 to A.Y. 2016-17; Ground No. 2(c) for A.Y. 2011-12 & A.Y. 2012-13 33.1 Through these grounds of appeal, the assessee has challenged the time limit for passing of the assessment order and as also auditing of books of account u/s. 142(2A) of the IT Act, 1961.

33.2 Before us, the counsel of the assessee did not press the grounds so raised and therefore, Ground Nos. 1(a), 1(b), 2(a) & 2(b) of the Assessee for A.Y. 2010-11 to A.Y. 2016-17 and Ground No. 2(c) of the Assessee for A.Y. 2011-12 & A.Y. 2012-13 are hereby Dismissed.

34. Ground No. 3 of the Assessee for A.Y. 2010-11 to A.Y. 2016-17 34.1 Through this ground of appeal taken for all the assessment years under consideration, the assessee has challenged the framing of the assessment on the basis of the report submitted by the special auditors without giving any opportunity to the assessee on such report.

34.2 Before us, the counsel of the assessee has not pressed this ground and therefore, the Ground No. 3 for A.Y. 2010-11 to A.Y. 2016-17 is hereby Dismissed.

35. Ground No. 4 of the Assessee for A.Y. 2010-11, A.Y. 2012-13, A.Y. 2013- 14, A.Y. 2014-15, A.Y. 2015-16 & A.Y. 2016-17 Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 35.1 Through the Ground No. 4 of appeal for A.Ys. 2010-11, 2013-14, 2014-

15, 2015-16 & 2016-17, the assessee has challenged the additions confirmed by the ld. CIT(A). Further, through the Ground No. 4 for A.Y. 2012-13, 2013-14, 2014-15 & 2016-17, the assessee has challenged the action of the ld. CIT(A) for making enhancement in the income of the assessee for such years. In the written submissions, the assessee himself has submitted that he has taken separate grounds of appeal in respect of each and every addition confirmed/enhancement made by the ld. CIT(A) on different grounds and therefore, no separate adjudication is warranted. Accordingly, the Ground No. 4 of the Assessee for A.Y. 2010- 11, A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15, A.Y. 2015-16 & A.Y. 2016- 17 is hereby Dismissed.

36. Ground No. 5 of the Assessee for A.Y. 2010-11, A.Y. 2012-13, A.Y. 2013- 14, A.Y. 2014-15, A.Y. 2015-16 & A.Y. 2016-17 and Ground No. 4 of the Assessee for A.Y. 2011-12 36.1 Through these grounds of appeal, taken for all the assessment years under consideration, the assessee has challenged the action of the ld. CIT(A) in upholding the action of the AO for making trading additions in the business income of the assessee without first rejecting the regular books of account u/s. 145(3) of the Act.

36.2 Aggrieved with the Order of Assessment, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee agitated that in the impugned assessment order, the AO has made trading additions in the hands of the assessee but, before making such addition, she has not specifically rejected the books of account of the assessee.

36.3 The ld. CIT(A) by way of giving his finding at para (4.4.1) of his Order dismissed the similar ground so raised by the assessee before him. The ld. CIT(A) held that during the course of the search and seizure operation in the group, certain incriminating documents and tally data were recovered and from such seized material, it got emanated that the assessee had carried out the liquor business by forming some syndicates with the other persons and from such syndicates the assessee had derived income. The CIT(A) further found that income from such syndicates were not recorded by the assessee in his regular books of account. According to the ld. CIT(A) since the AO had detected an altogether different source of income of the assessee, there was absolutely no necessity for the AO to first reject the books of account of the assessee u/s.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 145(3) of the Act which was maintained in respect of individual business of liquor carried out by the assessee and in respect of syndicate businesses. Accordingly, the ld. CIT(A) dismissed the Ground so raised.

36.4 Aggrieved with the Order of the ld. CIT(A), the assessee is in appeal before us.

36.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO and the ld. CIT(A) on this issue.

36.6 Per Contra, Learned Counsel for the assessee relied upon the written submissions made before the ld. CIT(A).

37.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides. In our considered view, the AO has not disturbed the trading results shown by the assessee in his books of accounts which were containing the records only in respect of the liquor business carried out by the assessee in his individual capacity. We find that the AO has made addition in the income of the assessee on a different ground i.e. the assessee's share of profit in various syndicates. Since, the addition has been made by way of discovering a new source of income by the assessee, without disturbing the results shown by the assessee in his regular books of account, there was absolutely no occasion for the AO to reject the regular books by invoking the provisions of s. 145(3) of the Act. Accordingly, the Ground No. 5 of the Assessee for A.Y. 2010-11, A.Y. 2012-13, A.Y. 2013-14, A.Y. 2014-15, A.Y. 2015-16 & A.Y. 2016-17 and Ground No. 4 of the Assessee for A.Y. 2011-12, being devoid of any merit are hereby Dismissed.

38. Ground No. 7 of the Assessee for A.Y. 2010-11 & A.Y. 2011-12 and Ground No. 8 of the Assessee for A.Y. 2012-13 & A.Y. 2013-14 38.1 Through these ground of appeal, the assessee has challenged the finding of the ld. CIT(A) to the effect that the assessee had formed some Syndicate named as 'M/s. Mahakal Traders, Dhar'.

38.2 Before us, the counsel of the assessee has not pressed these grounds of appeal and therefore, the Ground No. 7 of the Assessee for A.Y. 2010-11 & A.Y. 2011-12 and Ground No. 8 of the Assessee for A.Y. 2012-13 & A.Y. 2013-14 is hereby Dismissed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

39. Ground Nos. 8(a) & 8(b) of the Assessee for A.Y. 2010-11 39.1 Through these Grounds of appeal, the assessee has challenged the action of the ld. CIT(A) in upholding the addition of Rs.4,25,000/- made by the AO in A.Y. 2010-11 on account of undisclosed warehouse profit from Syndicate M/s. Mahakal Traders.

39.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the premises of the assessee, some loose papers in the form of capital account of the assessee in the books of M/s. Mahakal Traders, were found and seized. The AO, from the subject loose papers, noted that the assessee had made capital investment in the group and on such capital, the assessee had derived warehouse profit to the tune of Rs.4,25,000/-. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject loose papers but the assessee has not submitted any reply and sought time to submit his response. Finally, the AO made an addition of Rs.4,25,000/- in the

assessee's income on account of undisclosed warehouse profit from M/s. Mahakal Traders.

39.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The assessee, in his written submission, has mainly denied of operating any warehouse either in his individual capacity or in association with any other person or syndicate. The Id. CIT(A) noted that the subject loose paper, which was in the form of a computerized ledger account of the assessee in the books of account of some M/s. Mahakal Traders for the financial year 2009-10, was found and seized from the premises of the assessee. The Id. CIT(A) further noted that the assessee could not controvert that the income so credited was not his individual income but the income of some syndicate. Thus, in absence of any satisfactory reply from the assessee, the Id. CIT(A) confirmed the addition made by the AO. The Id. CIT(A) has given the relevant findings at para (4.12.1) of his order which are reproduced as under:

"4.12.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find that during the course of the search, a loose paper inventorized as LPS-3, Page no. 35, in IDS-04, was found and seized from the premises of the appellant. On a perusal of such seized paper, which has been reproduced by the AO at page no. 85 of the Assessment Order, it transpires that it is in the form of a computerized ledger Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 account of the appellant in the books of account of some M/s. Mahakal Traders for the financial year 2009-10. In such capital account, inter alia, a credit for a sum of Rs.4,25,000/- has been given to the appellant with the narration 'warehouse profit'. The appellant could not controvert that the income so credited was not his individual income but the income of some syndicate. In my view, the authenticity of the seized document cannot be disbelieved and therefore, in absence of any satisfactory explanation from the appellant, I find no infirmity in the action of the AO in making an addition to the income of the appellant. Thus, addition made by the AO amounting to Rs. 4,25,000/- is Confirmed. Therefore, appeal on these grounds is Dismissed."

39.4 Aggrieved with the addition confirmed by the Id. CIT(A), the assessee is in appeal before us.

39.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO and the Id. CIT(A) on this issue.

39.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

40.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides. Upon overall consideration of the facts of the case, we find absolutely no infirmity in the action of the Id. CIT(A) in confirming the

addition amounting to Rs. 4,25,000/- made by the AO in the assessee's income for A.Y. 2010-11 on the basis of one document seized from the premises of the assessee himself. We find that in such document, the capital account of the assessee has been credited with some warehouse profit and in our considered view, such warehouse profit derived by the assessee is not exempted u/s. 86 of the Act. Accordingly, the Ground Nos. 8(a) and 8(b) of the Assessee for A.Y. 2010-11 are hereby Dismissed.

41. Ground Nos. 9(a), 9(b) & 9(c) of the Assessee for A.Y. 2010-11 41.1 Through these Grounds of appeal, the assessee has challenged the action of the Id. CIT(A) in upholding the addition of Rs.2,36,000/- made by the AO in A.Y. 2010-11 on account of unexplained payment of commission to achieve turnover in M/s. Calcutta Developers Pvt. Ltd..

41.2 Briefly stated facts of the issue, as culled out from the records, are that during the course of the search and seizure action u/s. 132 of the Act carried Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 out in the premises of the assessee, some loose papers in the form of a letter given by some Saraogi & Associates on behalf of M/s. Calcutta Developers Pvt. Ltd. was found and seized. In the said letter, addressed to the assessee on 27- 04-2009, it has been stated that the assessee had paid a commission of a sum of Rs.2,36,000/- for purchasing turnover on behalf of some company namely M/s. Calcutta Developers Pvt. Ltd.. During the course of the assessment proceedings, the AO required the assessee to furnish his explanation on the subject loose paper, in response whereof the assessee stated that such loose paper was not belonging to him. Finally, the AO made an addition of Rs.2,36,000/- in the assessee's income on account of unexplained payment of commission.

41.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Id. CIT(A) noted that the subject loose paper was found and seized from the premises of the assessee itself. The Id. CIT(A) further noted that the assessee the assessee had purchased shares of M/s. Regent Beers & Wines Pvt. Ltd. from M/s. Calcutta Developers Pvt. Ltd. and therefore, the assessee's contention to the effect that he did not have any connection with M/s. Calcutta Developers Pvt. Ltd. is not tenable. The Id. CIT(A) also noted that the assessee could not demonstrate that under what circumstances such letter was found in his possession and why such letter was addressed to him. Further, as per Id. CIT(A), the assessee also could not demonstrate that the commission stated in the said letter was not paid by him but, by someone else. Thus, in absence of any satisfactory reply from the assessee, the Id. CIT(A) confirmed the addition made by the AO. The Id. CIT(A) has given the relevant findings at para (4.13.1) of his order which are reproduced as under:

"4.13.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I find that the subject loose paper was seized from the premises of the appellant itself. Further, the AO, at para (24.2) of the impugned Order, has noted that the appellant had purchased shares of M/s. Regent Beers & Wines Pvt. Ltd. from M/s. Calcutta Developers Pvt. Ltd. and therefore, the appellant's contention to the effect that he did not have any connection with M/s. Calcutta Developers Pvt. Ltd. is not tenable. A perusal of the said letter which is duly

signed by some Mr. Saraogi and which has been addressed to the appellant, it is evident that some payment of commission amounting to Rs.2,36,000/- was paid for procuring some turnover accommodation entries for a company namely M/s. Calcutta Developers Pvt. Ltd.. The appellant could not demonstrate that under what circumstances such letter was found in his possession and why such letter was addressed to him. The Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 appellant also could not demonstrate that the commission stated in the said letter was not paid by him but, by someone else. In such circumstances, in my considered view, I do not find any infirmity in the action of the AO in making the addition in the appellant's income. Thus, addition made by the AO amounting to Rs. 2,36,000/- is Confirmed. Therefore, appeal on these grounds is Dismissed."

41.4 Aggrieved with the addition confirmed by the ld. CIT(A), the assessee is in appeal before us.

41.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO and the ld. CIT(A) on this issue.

41.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the ld. CIT(A) and has also filed short hand notes before this Bench.

42.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides. Upon overall consideration of the entire material placed on record, we do not find any infirmity in the action of the ld. CIT(A) in confirming the addition to the extent of Rs. 2,36,000/- in the income of the assessee for A.Y. 2010-11 on account of payment of commission for achieving turnover for some company. We find that neither before the lower authorities nor before us, the assessee could give any explanation as to the circumstance in which the document seized was found in his possession. In absence of any explanation by the assessee, in our considered view, the AO was justified in making the addition of Rs. 2,36,000/- in the assessee's income on account of unexplained payment of commission. Accordingly, the Ground Nos. 9(a) to 9(c) of the Assessee for A.Y. 2010-11 are hereby Dismissed.

43. Ground No. 7 of the Assessee for A.Y. 2014-15 43.1 Through this Ground of appeal, the assessee has challenged the action of the ld. CIT(A) in upholding the addition of Rs.1,19,000/- made by the AO in A.Y. 2014-15 on account of undisclosed rental income from Bolero Vehicle.

43.2 Before us, the learned counsel of the assessee did not press the ground and therefore, Ground No. 7 of the Assessee for A.Y. 2014-15 is hereby dismissed as not pressed.

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17

44. Ground Nos. 8(a) to 8(d) of the Assessee for A.Y. 2015-16 and Ground Nos. 8(a) to 8(c) of the Assessee for A.Y. 2016-17 44.1 Through the Grounds of appeal for A.Y. 2015-16 & A.Y. 2016-17, the

assessee has challenged the action of the Id. CIT(A) in upholding the addition of Rs.74,80,454/- and Rs. 31,00,813/- made by the AO respectively for A.Y. 2015-16 & A.Y. 2016-17 on account of unexplained investment of the assessee in various syndicates.

44.2 Briefly stated facts of the issue have already been discussed while adjudicating the Ground No. 1 of the Revenue for A.Ys. 2010-11 to 2013-14 & 2015-16; Ground No. 2 of the Revenue for A.Y. 2016-17; Ground Nos. 6(a) & 6(b) of the Assessee for A.Ys. 2010-11 & 2014-15; Ground Nos. 5(a), 5(b), 6(a) & 6(b) of the Assessee for A.Ys. 2011-12, Ground Nos. 6(a), 6(b), 7(a) & 7(b) of the Assessee for A.Ys. 2012-13, 2013-14, 2015-16 & 2016-17 and therefore, the same are not being repeated here. In the grounds so raised, the assessee has agitated the very making of the addition on the count that he had neither formed any syndicate nor made any investment in such syndicates. While adjudicating the above grounds, it has been held by us that the assessee, in fact, had formed syndicates with others for carrying out the business of liquor and in such syndicates, he had also made some investments, towards his capital contribution, the sources whereof remained unexplained. However, the quantum of such unexplained investment was not determined for the reason that the assessee has taken the aforesaid specific grounds agitating the quantum of the additions. The AO has dealt with the issue of unaccounted capital investment at para (14.10) at page no. 51 of the impugned order. After reproducing the written submission made by the assessee before him, the AO, on the basis of the working of the Special Auditors, furnished the break-up of undisclosed capital investment for various assessment years in respect of which the assessee was issued a show cause notice. As per the break-up, the assessee was required to explain the sources of unexplained investment in capital of syndicates, for all the assessment years involved, at Rs.4,63,05,626/- . In the same para, the AO has also discussed, at length, the written submission made by the assessee before him. The AO has also made a reference of various charts and finally, on the basis of such charts and considering the submissions of the assessee, the AO at page no. 50 of the Order, by way of giving a table, reached to the conclusion that the assessee had made unexplained investments towards capital of the syndicates, in A.Y. 2015- 16, for a sum of Rs.74,80,454/-. Finally, based upon such table, the AO determined the amount of undisclosed capital investment at Rs.74,80,454/- for Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 A.Y. 2015-16. For A.Y. 2016-17, the AO vide para (27) of her Order on the basis of one handwritten loose paper seized from the premises of assessee's group company namely, M/s. Regent Beers and Wines Ltd., reached to the conclusion that the assessee's investment amounting to Rs. 31,00,813/- is towards the capital of one Ujjain syndicate.

44.3 Aggrieved with the Orders of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Id. CIT(A), after considering the submissions of the assessee, did not find any infirmity in the quantum of the undisclosed investment computed by the AO for A.Y. 2015-16. According to the Id. CIT(A), the AO diligently allowed the credits, wherever necessary, from the withdrawals made by the assessee in earlier years from the capital so invested. Thus, the Id. CIT(A) confirmed the addition of Rs.74,80,454/- made by the AO for A.Y. 2015-16. The Id. CIT(A) has given the relevant findings at para (4.10.2) of his order which are reproduced as under:

"4.10.2 I have considered the working made by the Special Auditors as well as the Assessing Officer, findings of the AO and written as well as oral submissions of the appellant made before me. After considering the facts of the case, I do not find any infirmity in the quantum of the undisclosed investment computed by the AO. The AO has diligently allowed the credits, wherever necessary, from the withdrawals made by the appellant in earlier years from the capital so invested. Thus, I am inclined to confirm the addition so made by the AO on this count. Accordingly, the addition made by the AO amounting to Rs.74,80,454/- is Confirmed. Therefore, appeal on these grounds is Dismissed."

44.4 The ld. CIT(A) also did not find any infirmity in the addition of Rs. 31,00,813/- made by the AO on account of assessee's investment in Ujjain Syndicate during the A.Y. 2016-17. The ld. CIT(A) noted that during the course of the search, a loose paper was found and as per such loose paper, the assessee was found to have made an investment of Rs.31,00,813/- in some Ujjain Syndicate. The ld. CIT(A) further observed that on such loose paper, with the description "Ramesh Rai Ji", a capital of Rs.31,00,813/- was clearly shown. According to the ld. CIT(A), during the course of the search and post search investigations, the assessee could not controvert the notings made on such loose paper neither before the AO nor before him. Accordingly, the ld. CIT(A) confirmed the addition of Rs.31,00,813/- made by the AO for A.Y. 2016-17. The ld. CIT(A) has given the relevant findings at para (4.27.1) of his order which are reproduced as under:

Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 "4.27.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. During the course of the search a loose paper was found and inventorized and as per such loose paper the appellant was found to have made an investment of Rs.31,00,813/- in some Ujjain Syndicate. On such loose paper, with the description "Ramesh Rai Ji" a capital of Rs.31,00,813/- has been clearly shown. During the course of the search and post search investigations, the appellant could not controvert the notings made on such loose paper neither before the AO nor before me. It has been established that the appellant had formed various syndicates with various persons in various years for carrying out the business of liquor and in such syndicates, the appellant had made investment towards his capital, the sources whereof have not been explained. The subject seized document also reveals the investment in capital of Ujjain Syndicate by the appellant at Rs.31,00,813/-. Thus, I find no infirmity in the action of AO in making the addition and therefore, the same is Confirmed. Therefore, appeal on this ground is Dismissed."

44.5 Aggrieved with the addition confirmed by the ld. CIT(A), the assessee is in appeal before us.

44.6 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO and the ld. CIT(A) on this issue.

44.7 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the ld. CIT(A).

45.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides and also gone through the judgments and decisions referred to and relied upon by both the sides. While adjudicating the Ground No. 1 of the Revenue for A.Ys. 2010-11 to 2013-14 & 2015-16; Ground No. 2 of the Revenue for A.Y. 2016-17; Ground Nos. 6(a) & 6(b) of the Assessee for A.Ys. 2010-11 & 2014-15; Ground Nos. 5(a), 5(b), 6(a) & 6(b) of the Assessee for A.Ys. 2011-12, Ground Nos. 6(a), 6(b), 7(a) & 7(b) of the Assessee for A.Ys. 2012-13, 2013-14, 2015-16 & 2016-17, we have already upheld that the assessee had formed the various syndicates with various persons for carrying out the business of liquor in which the assessee, as a member of the syndicate was having a definite share of profit. We have also held that in such syndicates, the assessee had made investments by way of contribution towards the capital. In respect of the addition of Rs. 74,80,454/- for A.Y. 2015-16, we find that from the various tally datas pertaining to the various syndicates, as seized from the various premises of the assessee and his associates, the assessing officer has vide para (14.7) of her Order has, inter alia, drawn the assessment year Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 wise details of capital invested by the assessee in various syndicates. We also find that after determining the assessment year wise investments, the AO has placed reliance upon one table marked as 'MS-01' prepared by the assessee and scanned by the AO at page no. 50 of her Order. We find that as per such table, except for A.Y. 2015-16, in all other assessment years, the amount of fresh capital infused by the assessee in various syndicates was lower than the sum total of capital withdrawn by the assessee from such syndicates and share of his profit in the respective syndicate and therefore, for other assessment years, the assessing officer has not made any addition on account of capital invested. However, for A.Y. 2015-16, the AO found that in such year, the assessee had not derived any share of profit from any syndicate and made the fresh investment amounting to Rs. 1,80,16,897/- but made the withdrawals from the capitals to the extent of Rs. 1,05,36,443/- only, thus, the AO found that during the year relevant to A.Y. 2015-16, the assessee had made the fresh investment without having any explained source. The AO discarded the assessee's submission regarding adoption of the peak theory for making the investment by giving a finding that it could not have been presumed that capital withdrawn by the assessee in one year would be available for making investment in subsequent years. However, in our considered view, the AO having himself placed reliance upon the chart MS-1 placed at page no. 50 of her Order, in which availability of funds in the hands of the assessee as on 31/03/2014 was clearly appearing at Rs. 7,26,99,684/-, was not legally justified in not accepting the contention of the assessee that the investment amounting to Rs. 74,80,454/- was made by him out of the funds in the form of accumulated share of profit in syndicates up till 31/03/2014. In our considered view, it is not the case of the ld. AO that the funds shown in the last column of the table MS-1 were not available to the assessee for making fresh investment during the financial year 2014-15 relevant to A.Y. 2015-16. Likewise, for the addition made by the AO for A.Y. 2016-17, amounting to Rs. 31,00,813/- on account of assessee's investment in the capital of the Ujjain syndicate, we are of the considered view that even such capital investment get fully explained by the sources of accumulated share of profit available in the hands of the assessee. We find that even after giving the telescoping benefit to the assessee in respect of his investment in immovable properties, expenditure on account of marriage and cash found in the locker, there would remain ample of funds available in the hands of the assessee for explaining the aforesaid sources of investment in capital of various syndicates. In nutshell, although we uphold the assessee's formation of various

syndicates and making of investment by the assessee in such syndicates, but for the reasons given Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 above, we find that the addition of Rs. 74,80,454/- and of Rs.31,00,813/- were not warranted in the hands of the assessee respectively for A.Y. 2015-16 and A.Y. 2016-17 on the count of assessee's investment in syndicates. Accordingly, we dismiss the Ground No. 8(a) to 8(c) for A.Y. 2015-16 and Ground No. 8(a) & 8(b) of the Assessee for A.Y. 2016-17, but, the Ground relating to the grant of benefit of telescoping being Ground No. 8(d) for A.Y. 2015-16 and Ground No. 8(c) for A.Y. 2016-17 are hereby Allowed.

46. Ground No. 9 of the Assessee for A.Y. 2016-17 46.1 Through this Ground of appeal, the assessee has challenged the action of the Id. CIT(A) in upholding the addition of Rs.5,00,000/- made by the AO in A.Y. 2016-17 on account of unexplained expenditure in the nature of illegal gratification.

46.2 Briefly stated facts of the issue, as emanating from the assessment order, are that during the course of the search and seizure action u/s. 132 of the Act carried out in the premises of the assessee situated at Indore, some loose paper inventorized as BS-2, Page no. 47 was found and seized. The AO, from such loose paper, noted that the assessee had made payment of some illegal gratification of Rs.5,00,000/-. During the course of the assessment proceedings, the AO, vide a show-cause notice, required the assessee to furnish his explanation on the subject issue. In reply, the assessee denied of making any illegal gratification. The AO, by discarding the explanation of the assessee, made an addition of Rs.5,00,000/- on this count.

46.3 Aggrieved with the Order of Assessment, the assessee preferred an appeal for the subject assessment year before the Id. CIT(A). During the course of the first appellate proceedings, the assessee made detailed written submissions along with the documentary evidences. The Id. CIT(A) did not find any merit in the contention of the assessee and regarded the assessee's explanation as merely an afterthought and a concocted story. Accordingly, the Id. CIT(A) confirmed the addition of Rs.5,00,000/- made by the AO for A.Y. 2016-17. The Id. CIT(A) has given the relevant findings at para (4.25.1) of his order which are reproduced as under:

"4.25.1 I have considered the facts of the case, the Assessment Order and the written as well as oral submissions of the appellant. I do not find any merit in the contention of the appellant. I find that the appellant's explanation is merely an afterthought and a concocted story. Thus, I do not find any infirmity in the AO's action in making the addition in the appellant's income. Accordingly, the Shri Ramesh Chandra Rai, Ratlam AY 2010-11 to AY 2016-17 addition of Rs.5,00,000/- so made by the AO on this count is Confirmed. Therefore, appeal on this ground is Dismissed."

46.4 Aggrieved with the addition confirmed by the Id. CIT(A), the assessee is in appeal before us.

46.5 Before us, learned CIT(DR) vehemently argued supporting the observations of the AO and the Id. CIT(A) on this issue.

46.6 Per Contra, Learned Counsel for the assessee has relied upon the written submission made before the Id. CIT(A) and has also filed short hand notes before this Bench.

47.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of the authorities below, Special Auditors Report, written and oral submissions made from both the sides. On an overall consideration of the facts and circumstances of the case, we find that the subject paper was found and seized from the premises related to the assessee and from which the payment of Rs. 5,00,000/- is clearly discernible. We find that in respect of such payment, the assessee could not explain the source and therefore, we find no infirmity in the action of the Id. CIT(A) in confirming the aforesaid addition of Rs.5,00,000/-. Accordingly, the Ground No. 9 of the Assessee is hereby Dismissed.

48. In the result, all the appeals of the Revenue are dismissed and that of the assessee are partly allowed as per terms indicated hereinabove.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 18.04.2022.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

/Dated : 18.04.2022
Patel/PS

Shri Ramesh Chandra Rai, Ratlam
AY 2010-11 to AY 2016-17

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order, Asstt.Registrar, I.T.A.T., Indore