

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV,
JUDICIAL MEMBER, AND
SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA Nos.1384 to 1386 & 1820/PN/2012
(A.Ys. 2007-08 to 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Shri Vijaykumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAHPL2980R

Respondent

CO Nos.32 to 35/PN/2014
(A.Ys. 2007-08 to 2010-11)

Shri Vijaykumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAHPL2980R

Cross Objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA Nos.1387, 1388 & 1959/PN/2012
(A.Ys. 2008-09, 2009-10 & 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Shri Anilkumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAYPL6657N

Respondent

CO Nos.43 to 45/PN/2014
(A.Ys. 2008-09 to 2010-11)

Shri Anilkumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAYPL6657N

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA Nos.1542, 2245 & 1960/PN/2012
(A.Ys. 2008-09, 2009-10 & 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Shri Dineshkumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAHPL2979E

Respondent

CO Nos.46 to 48/PN/2014
(A.Ys. 2008-09 to 2010-11)

Shri Dineshkumar Bhagchand Lodha
Lodha Bhavan, Satana Road,
Malegaon, Nashik

PAN: AAHPL2979E

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA No.1816/PN/2012
(A.Y. 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Smt. Suman Anilkumar Lodha
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1353Q

Respondent

CO No.49/PN/2014
(A.Y. 2010-11)

Smt. Suman Anilkumar Lodha
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1353Q

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA No.1817/PN/2012
(A.Y. 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Smt. Saroj Vijaykumar Lodha
Lodha Bhavan, Mahavir Nagar Marg
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1355J

Respondent

CO No.50/PN/2014
(A.Y. 2010-11)

Smt. Saroj Vijaykumar Lodha
Lodha Bhavan, Mahavir Nagar Marg
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1355J

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA No.1818/PN/2012
(A.Y. 2010-11)

ITO (Central)-I, Nashik

Appellant

Vs.

Smt. Sujata Dinesh Lodha
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1354K

Respondent

CO No.51/PN/2014
(A.Y. 2010-11)

Smt. Sujata Dinesh Lodha
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AADPL1354K

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

ITA No.1819/PN/2012
(A.Y. 2009-10)

ITO (Central)-I, Nashik

Appellant

Vs.

Shri Bhagchand Motilal Lodha
Lodha Bhavan, Mahavir Nagar Marg,
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AAEPL3261G

Respondent

CO No.52/PN/2014
(A.Y. 2010-11)

Shri Bhagchand Motilal Lodha
Lodha Bhavan, Mahavir Nagar Marg,
Near Govt. Hospital, Satana Road,
Malegaon, Nashik

PAN: AAEPL3261G

Cross objector

Vs.

ITO (Central)-I, Nashik

Respondent

Assessee by : Shri Pramod Shingte
Department by: Shri S.P. Walimbe
Date of Hearing : 12.03.2014
Date of order : 20.03.2014

ORDER

PER BENCH:

All the appeals filed by the revenue and corresponding cross objections filed by the assessee pertain to the same group for different assessment years. So these were heard together and are being disposed off by this consolidated order for the sake of

convenience. The ITA Nos.1384 to 1386 & 1820/PN/2012 for A.Y. 2007-08 to 2010-11 pertain to Shri Vijaykumar Bhagchand Lodha.

2. In ITA No.1384/PN/2012 for A.Y. 2007-08, the revenue has filed the appeal on the following grounds:

01. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.29,765/- made by disallowance of part of agriculture income shown in the return.
02. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of receipt of advance against property at Rs. 8,99,500/-.
03. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained expenditure in the construction of bungalow on the basis of seized documents amounting to Rs. 9,78,836/-.
04. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
05. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
06. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

3. Briefly the facts of the case are that the assessee is an individual having income from salary, capital gain, interest income from firms in which the assessee is a partner, agricultural income etc. The assessee is regularly assessed to income tax. The original return of income for the year under consideration was filed by the

assessee declaring total income of ₹ 4,55,810/- and agricultural income at ₹ 59,530/- on 31.03.2008. A search was conducted u/s. 132(1) on 21.05.2009 at the residential premises of the assessee as well as business premises of the firm M/s. M.B. Chemicals in which the assessee is a partner and also company M/s. M.B. Sugars & Pharmaceuticals Ltd., in which the assessee is a director. In response to the notice u/s.153A, the assessee filed a return of income declaring total income of ₹ 4,55,810/- and agricultural income of ₹ 59,530/- on 29.08.2011. Thereafter, the reassessment u/s. 143(3) r.w.s. 153A was completed on the total Income of ₹ 23,80,081/- and agricultural income of ₹ 29,765/- on 30.12.2011. The issues with regard to variation in the returned income and assessed total income are disallowance of the part of the agricultural income, addition on account of advances received as per Balance Sheet and addition on account of unexplained investment in bungalow.

4. As stated above, the Assessing Officer made addition of ₹ 29,765/- on account of disallowance of agricultural income. The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of the assessee with regard to disallowance of 50% of agricultural income of ₹ 29,765/- made for the reason that the assessee has not furnished the supporting evidence like sale pattis, market certificates bills for fertilizers, etc. to substantiate the correctness of the agricultural income. In this regard, the stand of the assessee has been that the impugned disallowance is made in spite of the fact that the assessee is owning 28.95 acres of irrigated agricultural land and also the agricultural income was disclosed by the assessee in the return of income filed prior to the search action.

4.1 The relevant portion of the submission by the Authorized Representative before CIT(A) is as under:

"The appellant has disclosed agricultural income of Rs.59,530/- during the year under review. The A.O. disallowed the 50% of the same and treated the same as income from undisclosed sources. The impugned addition is made by the A.O. on the basis of following reasons-

1. The appellant has not furnished any other supporting evidences like sale patts, market certificates, bills for fertilizers, etc. to substantiate the correctness of the agricultural income.
2. The appellant has not maintained any books of accounts for his individual entity.

4.2 The actual fact and submission of the appellant in respect of above is as under

1. It is undisputed fact that the appellant is owing 28.95 acres of irrigated agricultural land. The 7/12 extracts of the same are also on record. The agricultural activity is also disclosed by the appellant in the return of income prior to search action. The impugned agricultural income was also disclosed by the appellant in the return of income filed prior to search action. No any incriminating material found during the search action to justify the said addition.
2. The books of accounts are not maintained by the appellant as not required to be maintained under the provisions of law. It is also not the case of the A.O. that the appellant has contravened any law by not maintaining the books of account.
3. The reasonableness of the income is also not doubted by the A.O. In fact the reasonableness of the income cannot be doubted by the A.O. because the agricultural income shown by the appellant per acre is one of the lowest. Hence the allegation of the A.O. that the agricultural income as well as refund of advance is shown by the assessee as source of certain expenses is out of prejudicial mind because the A.O. has alleged that the 7/12 extracts dated 13/01/2010 are obtained to support the agricultural income so as to enable the appellant to debit certain huge expenses. From such statement of the A.O., it appears that he has even doubted the 7/12 extracts, which is a Government record.

Therefore on the basis of above submission the addition made by the A.O. on account of agricultural income please be deleted.”

4.3 The submission of the assessee was sent to Assessing Officer for his comments. The Assessing Officer vide his report dated 27.03.2012 has reiterated that the assessee has no evidence of sale of crops in the form of sale pattis, etc. The relevant portion of the remand report submitted by the Assessing Officer is as under:

"In this connection at the outset it can be said that the assessee has accepted that he has no evidence of sale of crops by not producing the evidence in form of sale patties, etc. Merely 7/12 extracts do not substantiate the quantum of the yield produced and the income thereof. Further, assessee has made an attempt to justify the claim of the agricultural income from the cultivation of the land on the basis of 7/12 extracts. During assessment proceedings, the assessee has not furnished any other supportive evidences despite of several opportunity allowed in regard to sustaining of the income so credited in the capital account. It is also worth to submit that the assessee prepared his capital, balance sheet position etc. only after search action. By this way the assessee manipulated his accounts as per requirements if funds with other concerns of his group. The addition on this point has been elaborately discussed al para no. 7.2 of the assessment order with the overall consideration of the capital introduced. However, to allow natural justice the income so credited were considered :«; 50% of the amount under this head even there is no income proof or evidences furnished by the assesseees other than 7/12 extracts. The contention of the assessee is not accepted."

4.4 The copy of said report of the Assessing Officer was given to the learned Authorized Representative of the assessee for his comments. The Authorized Representative on behalf of assessee has made written submission vide his letter dated 30.03.2012, which is as under:

"The contention of the A.O. that the appellant has not furnished evidence in the form of sale patties to deny the partly the claim of the agricultural income is incorrect because the agricultural operation carried out by the appellant is not in dispute because the A.O. himself has accepted part of the

agricultural income. Further the reasonableness of the agricultural income is also not in dispute. It is accepted fact that the agrarian sector is not organized and many times due to spot sale the sale notes are not available".

The second contention of the A.O. that the balance sheet is prepared by the appellant after search action is not correct because the said agricultural income was already disclosed by the appellant in all the original returns of income filed prior to search action upto introduction of e-filing scheme. It is also pertinent to note that the abridged cash account was furnished along with the original return of income in which the said agricultural income was already disclosed. Therefore this contention of the A.O. is based on surmises and out of sheer prejudice.

Further, no evidence is found during the search action or brought on record by the AO to negate the claim of the agricultural income as disclosed by the appellant."

Therefore, on the basis of above submission Ld A.R. urged to delete the impugned disallowance made on account of part agricultural income."

4.5 Having considered the same, the CIT(A) deleted the addition of ₹ 29,765/-. The same has been opposed before us on behalf of revenue, inter alia submitted that the CIT(A) erred in deleting the addition of ₹ 29,765/- made by disallowance of part of agriculture income shown in the return. On the other hand, the learned Authorized Representative supported the order of CIT(A).

4.6 Having gone through the rival submissions and material on record, we find it undisputed that the assessee has irrigated land holding of 28.95 acres of land, on which the assessee has grown crops like bajra, maize, mango and grass for cattle feed. The Assessing Officer has not doubted the reasonableness of agricultural income shown by the assessee in his return of income but only stated that the assessee has neither produced any supporting evidences like sale pattis, etc. to substantiate the agricultural income nor has maintained any books of account for his individual entity. According to us, the agriculturists were not

maintained books of accounts; we are of the view that once there is an agricultural holding, production thereon is bound to be there, once land is irrigated one. In the instant case, the assessee has shown agricultural income in the return of income filed prior to the search action. Though the assessee has not maintained books of account as discussed above, but has furnished abridged cash account with the returns of income upto the year of introduction of e-filing scheme. In this situation, it could not be said that the assessee has manipulated his accounts as per the requirements of funds. There is nothing on record to suggest that any incriminating evidence was found during the course of search action or brought on record by the Assessing Officer to negate the claim of the assessee of earning agricultural income as disclosed by him. Taking all facts and circumstances, the CIT(A) was justified in observing that the assessee's claim of agricultural income is reasonable as compared with the holding of agricultural land by him. Accordingly, the CIT(A) was justifying in deleting the addition made by way of disallowance made by the Assessing Officer of the agricultural income amounting to ₹ 29,765/-. We uphold the same.

5. Next issue is with regard to advance of ₹ 8,99,500/- shown to be received against the property as per Balance Sheet. Facts of the issue involved is that there was credit balance in the Balance Sheet of the assessee of ₹ 8,99,500/- in the name of family members. The Assessing Officer made the addition thereof. The main reason given by the Assessing Officer for making the impugned addition is that the assessee has incurred some expenditure in acquisition of plot of ₹ 18,59,385/- and also incurred expenditure for construction of house thereon of ₹ 10,68,715/-. The Assessing Officer further observed that as per Balance Sheet, the assessee has shown to have received ₹ 8,99,500/- in cash on account of advance for property from his family members i.e. ₹ 3,75,000/- from Bhagchand M. Lodha, ₹ 1,25,000/- from Bhagchand M. Lodha HUF and ₹

4,00,000/- from Saroj A. Lodha. The Assessing Officer stated that the assessee has adopted this modes operandi to introduce his unexplained and unaccounted money for creating capital and diverting for bungalow/marriage and other arrangements.

5.1 In appeal before CIT(A), the stand of the assessee has been that of the assessee has been that he has disclosed the said advances as received in his financial statements and also the persons from whom the assessee has received the said advances are family members. Their cases were also with the same Assessing Officer who have shown the said transactions in the financial statements. The relevant portion of the submission in this regard of the Authorized Representative is as under:

"During the year under review the appellant has received advances of Rs.3,74,500/- from Shri Bhagchandji M. Lodha, Rs.1,25,000/- from Shri Bhagchandji M. Lodha (HUF) and Rs.4,00,000/- from Mrs. Suman A. Lodha in cash. The said advances were disclosed in the financial statements of the appellant. In para 7.3 of the assessment order, the A.O. has linked the investments made by the appellant with the impugned advances received. It is the contention of the A.O. that the impugned advances received are either fake or the persons from whom the advances are shown to be received are fake. It is also pertinent to note that the A.O. has even doubted the investments made by the appellant during the year under review as well as cash on hand shown by the appellant. In such circumstances and without prejudice to the actual fact then the addition made by the A.O. on the count of advances received is not justified. However basically the A.O. is in total confused state of mind to treat the advances received by the appellant as fake or the assets represented by the said advances received as fake. This state of mind of the A.O. clearly indicates his prejudicial nature against the appellant. The A.O. has made addition of advances received from the family members on the belief that they are fictitious transactions. Nevertheless the appellant during the assessment proceedings has furnished the confirmations of the above persons and surprisingly the cases of Bhagchand M Lodha Ind. and Bhagchand Lodha HUF and also Suman Lodha were also under scrutiny before him, wherein they have clearly shown in their financial statements, the impugned amount paid to the appellant. The copy of acknowledgment of

returns of income, Balance sheets and confirmation letters for the year under review are enclosed herewith.

The impugned addition is not made by the A.O. on the basis of any seized material, however the impugned addition is made by the A.O. on the basis of financial statements of the appellant. The non application of mind of the A.O. is also appeared from the order itself because he has made reference to the para Nos. 3 & I as confining para as mentioned in the said order, but the fact is different.

Therefore in such circumstances, the impugned addition made by the A.O. please be deleted".

5.2 The submission of the assessee was sent to the Assessing Officer for his comments. The Assessing Officer vide his report dated 27.03.2012 has stated that the individual accounts of the assessee were finalized only after the search action and the funds were adjusted and manipulated as per requirements and all the transactions were shown to be entered in cash by way of advances against properties and loan, etc. The relevant portion of the report is as under:

"The contention of the assessee is not substantive in the way that the individual accounts were finalized only after the search action. The funds were adjusted and manipulated as per the requirements of the concerns. The confirmation letters clearly shown that there is cash transaction with the group in a large extent by way of advances against property and loans. It is worth to mention that the transaction of any property never got materialized within the family members at any point of time. On the basis of such confirmation letters over the years involved, the respective quantum for a specific year has been arrived. The onus to ascertain the genuineness of the transaction has not been discharged by the assessee other than the claim that the funds were transacted by way of cash for property advances which were not materialized. The assessee has not on any occasion submitted the deeds etc (hisar pavati, sathe khat, agreement for sale) in support of such advances against property. The copies of all confirmation letters are enclosed for your ready reference that clearly shown the modus operandi of the assessee by way of which the unaccounted and unexplained monies were introduced in capital. The additions were made after ascertaining the cash

advance transactions for the concerned year only in the hands of the assessee wherever applicable and has not been doubly taxed as alleged by the assessee. The assessee has failed to discharge his onus of genuineness on this point but to the confirmations after manipulation of the capital accounts and introduction of cash wherever required. The assessee and his family members have not submitted the details of cash withdrawals with the respective concerns for property transaction even of several requests to submit the same were made. This part has been elaborately discussed at para no. 7.3 of the assessment order where such unaccounted monies have been discussed as diverted towards marriage and bungalow construction. The contention of the assessee is not accepted."

5.3 The copy of said report of the Assessing Officer was supplied to the learned Authorized Representative of the assessee for his comments. In response, the Authorized Representative of the assessee has made written submission vide his letter dated 30.03.2012, which is as under-

"The A.O. mainly doubted the said advances as they are taken from Shri Bhagchandji M. Lodha Rs.3,74,500/-, Shri Bhagchandji M. Lodha HUF Rs.1,25,000/- and Mrs. Suman A Lodha Rs.4,00,000/- in cash and no written agreement i.e. Sathé Khat, agreement for sale, etc. were furnished. Here it is to be stated that the said advances are taken in cash as the persons from the appellant has taken are all family members and it would be too much to expect in case of family members to have transactions by account payee cheques and also to have written agreements for transactions with each other. The contention of the A.O. is surmises and out of sheer prejudice. The availability of funds with the said parties members is not in dispute, all the persons are assessed to tax is not in dispute, it is also fact that the funds with the other persons are mainly out of taxable income as shown by them in their respective return of income. The conditions i.e. genuineness of person, creditworthiness of person are not in dispute. The A.O. has just doubted the genuineness of transaction but if the genuineness transaction is doubted then that would result heavy cash on hand in the hands of the said persons in the family at one hand and negative cash in the hands of appellant in the same family at other hand. Further the question of agreement does not arises as the said persons are all family members of the appellant. Here it is to be pointed out that in similar case such transactions are accepted by the income tax department in the assessment of Choksi Group."

In this background, the learned Authorized Representative requested to delete the impugned addition made on account of advance given as per Balance Sheet.

5.4 Having agreed to the contention of the learned Authorized Representative, CIT(A) granted relief to the assessee on this account. The same has been opposed before us on behalf of revenue inter alia submitted that the CIT(A) erred in deleting the addition on account of receipt of advance against property at Rs. 8,99,500/-. On the other hand the learned Authorized Representative supported the order of CIT(A) on the issue.

5.5 After going through the rival submissions and material on record, we find it undisputed that the amounts shown to be received as advances is mentioned in the balance sheet of the assessee at liability side. At the same time it is also not disputed that the parties from whom the said advance is shown to be received i.e. Shri Bhagchandji M. Lodha, Shri Bhagchandji M. Lodha HUF and Mrs. Suman A. Lodha have also shown the amount of advance given to the assessee ₹ 3,74,500/-, ₹ 1,25,000/- and ₹ 4,00,000/- respectively in their respective Balance Sheets. It was also found undisputed that all the said parties are also assessed by the same Assessing Officer at the same time. The sources available with the said parties for advancing the impugned sums to the assessee are not in dispute or doubt. In this background, the stand of the Assessing Officer that the assessee has introduced his unaccounted and unexplained cash by creating capital and diverting the same for construction of bungalow or marriage or other adjustment is not justified. It is based on surmises because the said transaction is duly disclosed by the assessee in his Balance Sheet as liability and the same is not credited to the capital account. Further, the stand of the Assessing Officer that the assessee has purchased the plot for construction of the bungalow

during the year under appeal is not correct because the said plot was acquired by the assessee during the F.Y. 2003-04. The Assessing Officer has always, in the group cases, assumed that advances given or received back and disclosed in the Balance Sheet as unaccounted or unexplained money, is not justified. It is more so, when the said advances were disclosed by the assessee in the Balance Sheets, therefore, the same could not be treated as unaccounted or unexplained. The genuineness of the person from whom the said advances are shown to be received as well as their credit worthiness is not in dispute. The genuineness of the transactions should not be doubted by the Assessing Officer once the parties have also shown the said transactions in their financial transactions and also given confirmation thereof. In this background the Assessing Officer was not justified in making the addition on account of advance received of ₹ 8,99,500/- and the same has rightly been deleted by the CIT(A) by reasoned factual finding. We uphold the same.

6. The next issue relates to the addition of ₹ 9,78,836/- made on account of unexplained expenditure incurred on bungalow construction. During the course of search action certain documents marked as Annexure A-3/2 & A-31 were found and seized which contained some details of the expenses on the construction of bungalow of the assessee. The Assessing Officer made an addition thereof for the reason that the assessee has not commented on this issue and just claimed that the same is accounted for in the Balance Sheet and no supporting evidences were available with the assessee. The Assessing Officer also stated in the assessment order that the assessee has claimed that some of the expenses as noted on the pages as referred hereinabove pertains to B.M. Lodha Market, however nothing has been furnished in support of this contention.

6.1 In appeal, the stand of the assessee has been that the impugned expenses were well accounted in the Statement of Affairs of the assessee and no claim has been made by the assessee that any of the above mentioned expenses were related to B.M. Lodha Market. The relevant portion of the submission of the assessee is as under:

"During the course of search action certain documents pertaining to expenditure incurred on bungalow construction of the appellant were found. The complete explanation with reference to said documents were furnished to the A.O. during the course of assessment proceedings, however it appears that the A.O. has made impugned addition of Rs.9,78,836/-, the details of which are as under, with prejudicial mind and absolutely ignoring the submissions made on behalf of the appellant in this respect.

<u>Annexure</u>	<u>Amount</u>
Annexure A-3/2	Rs.19,436/-
Annexure A-31	Rs.9,59,400/-

Total	Rs.9,78,836/-

The actual fact and submission of the appellant in respect of above is as under:

Annexure A-3/2, Page No. 14 to 38 of Rs.19,436/-

The said pages are the bills as well as cash vouchers for construction expenses of bungalow namely Lodha Palace of the appellant. Page No. 38 include total expenditure on account of construction at Rs. 19,436/- which include the expenditure noted in page No. 11 to 37. The expenses of Rs. 19,436/- are accounted in the statement of affairs of the appellant for the year under review. The account extract of investment in Bungalow construction is enclosed herewith. Annexure A-31 of Rs.9,59,400/-

The said bundle was not found from the premises of the appellant or his brothers. The said bundle was seized from the residential premises of the Nemichand P Modi, which contains expenditure in respect of different work such as RCC, sand, watchman salary, etc. incurred by the Mr. Deepak N Modi for

construction of bungalow viz. Lodha Palace. The said expenses were incurred by Mr. Deepak Modi out of the payments made to him by the appellant as well as his wife Mrs. Saroj Lodha from time to time. This fact is not in dispute. The Page Nos. 85 and 86 of the said bundle also contains such details of amounts received by Mr. Deepak N Modi from the appellant and his wife for construction of bungalow. The said two pages are only summary of the amounts received by Mr. Modi and the is clearly co-relatable with the cash books seized at Annexure A-27, A29, etc from the premises of Mr. Deepak Modi. The said payments were made by the appellant and his wife and the same are duly disclosed in their respective financial statements. The A.O. assumed the said two pages as expenditure incurred for construction of bungalow construction out of unexplained and unaccounted monies and therefore the A.O. made addition of Rs.9,59,400/- in the hands of the appellant ignoring the fact that the amount paid by the appellant as well as his wife to Mr. Deepak Modi from time to time are duly accounted and disclosed by the appellant and his wife.

8.1 Further, during the year under appeal, the appellant and his wife has disclosed the construction payment to Mr. Deepak N Modi at Rs. 7,24,400/-and Rs. 2,39,780/- respectively in their respective statement of affairs, which is more than the amount shown by the A.O. as expenditure incurred on account of bungalow construction. The account extract of bungalow construction reflecting the payments made to Mr. Modi by the appellant and his wife are enclosed herewith".

6.2 The submission of the appellant was sent to the AO for his comment. The AO vide his report dated 27/03/2012 has stated that the debit balance of bungalow account is furnished by the appellant only after the search action and the appellant did not correlate the noting of the seized documents with the investment. The relevant portion of the report is as under:

"The contention of the assessee is not accepted, the assessee has furnished the debit balance of the bungalow only after the search action. The referred diary contained the investments made on account of the bungalow out of the cash available and inter transferred within the family members. The assessee furnished the balance sheet in regard to value of the bungalow and a statement of availability of the funds. The assessee did not correlate the nothing of the seized documents with the

investments nor furnished the evidences of such investments at any time of the proceedings. The assessee relied only on his submission as substantive base for consideration. The contention of the assessee is not accepted".

6.3 The copy of the said report of the Assessing Officer was supplied to the learned Authorized Representative of the assessee for his comment. The learned Authorized Representative of the assessee has made written submission vide his letter dated 30.03.2012, which is as under:

"The contention of the AO that the appellant has furnished only debit balance of bungalow is not correct because the complete details of day to day expenses incurred by the appellant and accounted in the financial statements were furnished to the A.O., in which impugned expenses were clearly identifiable. The actual nature with fact of expenses was explained. The sources for the bungalow construction were also reflected in the Balance Sheet. In brief all the expenses are already considered by the appellant in his financial statements. The actual fact that some of the expenses were incurred by Deepak Modi out of the funds given to him by appellant is also not in dispute. In brief, the appellant as well as his wife has accounted the entire expenses in their statement of affairs is not in dispute. In such circumstances, the A.O. should have verified the sources of the same."

In this background it is submitted that the addition made on account of unexplained expenditure on construction of bungalow be deleted. The CIT(A) having considered the rival submissions and material on record, deleted the addition in question. The same has been opposed before us on behalf of revenue, inter alia submitted that the CIT(A) erred in deleting the addition on account of unexplained expenditure in the construction of bungalow on the basis of seized documents amounting to Rs. 9,78,836/-. Accordingly, the order of CIT(A) be set aside and that of Assessing Officer be restored on the issue. On the other hand, the learned Authorized Representative supported the order of CIT(A).

6.4 After going through the rival submissions and material on record, we find that the Assessing Officer has made addition on account of unexplained expenditure in the construction of bungalow on the basis of seized documents amounting to ₹ 9,78,836/-. The stand of the assessee has been that all the expenses on construction of bungalow were disclosed in the Balance Sheet of the assessee as well as wife of the assessee, which were found correct on the basis of documents placed in this regard before CIT(A). The Assessing Officer has not disputed the fact that the disclosure of construction of bungalow by assessee as well as his wife in their Balance Sheets. The contentions of the Assessing Officer is that the assessee has not filed the supporting document of the expenses on bungalow as shown by him and his wife in their Balance Sheet is illogical because the evidence of expenses are found during the course of search action. Hence, there was no need for the assessee to file again supporting evidences of the same and the interpretation of the said seized record as made by the Assessing Officer was accepted by the assessee i.e. in the present case the expenses on bungalow as per noting on the said seized documents was not denied by the assessee. The Assessing Officer was also not justified to hold that the assessee has not correlated the noting of the seized material with bungalow account as per his Balance Sheet was not correct because the capital account as well as bungalow construction account along with all groupings of the Balance Sheet were furnished by the assessee with his submission dated 01.11.2011. The Assessing Officer has simply overlooked the same. In view of the above, the CIT(A) was justified in observing that the expenses as mentioned were duly accounted by the assessee and shown in their respective balance sheets. Therefore, the addition thereof made by the Assessing Officer amounting to ₹ 9,78,836/- was not justified and the same has rightly been deleted by the CIT(A). This reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same. The assessee has

also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

7. As a result, this revenue's appeal as well as corresponding cross objection of assessee, are dismissed.

8. In ITA No.1385/PN/2012 for A.Y. 2008-09, the revenue has filed the appeal on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of receipt on account of cancellation of property transaction of Rs. 3,13,900/-.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not appreciating that there is no evidence to prove that he said amount of Rs.3,13,900/- was advanced to the party concerned prior to cancellation of the transaction and rejection thereof.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agricultural income at Rs.52,753/-.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of receipt of advance against property at Rs. 28,84,010/-
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of advance for property at Rs. 16,00,000/-.
6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained expenditure in the construction of bungalow on the basis of seized documents amounting to Rs. 95,31,628/-.
7. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained expenditure on the basis of seized documents amounting to Rs. 12,279/- and Rs.205,650/-.

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in Ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
9. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
10. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

9. The first issue is with regard to the addition of receipt on account of cancellation of property transaction of ₹ 3,13,900/-. The main reason given by the Assessing Officer for making the said addition is that the assessee has not furnished the supporting documents like Sathe khat, cancellation deed, etc. and therefore the Assessing Officer treated the said transaction as fictitious in nature or made through fake or fictitious persons.

9.1 In appeal before CIT(A), the stand of the assessee has been that the said advances given as well as refund of the same were well disclosed in the Balance sheet of the assessee of the respective years. It was further stated on behalf of assessee that in case the advances were treated as not given to Mr. Ahire then to that extent cash on hand of the assessee would have been more and therefore there is no effect on cash position of the assessee and the confirmation letter of the said person along with other details was on the record. Against the above addition, the stand of the assessee before the CIT(A) by way of written submission was as under:

"During the year under review the appellant has received refund of advance of Rs. 3,13,900/- from Mr. Ramchandra D Ahire. The advances for purchase of property totaling to Rs. 3,87,400/- were given to him, out of which Rs. 3,70,000/- were given to him during the year 2001-02 and balance Rs. 17,400/- were given to him on 14.02.2004. However due to cancellation of the terms, the said advance so given was

received back, out of which Rs.3,13,900/- was received during the year under review as refund of the said advance so given. The said advance was duly disclosed in the financial statements for years together. However the A.O. made addition thereof on the basis of following reasons.

1. The appellant has not specified as to for which property this advance has been made any why the proposed transaction was received back.
2. The appellant has not furnished any documentary evidences such as Sathe khat, receipts, etc.
3. The appellant has not furnished the PAN, address of the concerned person.
4. There is no such person with whom such transaction was in way of offing and therefore there lead to assumption that appellant under the guise of credited advances for purchase of asset has tried introduced the unexplained monies through use of fake and fictitious persons.

9.2 The actual fact and submission of the appellant in respect of above is as under:

1. During the year under review the appellant has received refund of advance given of Rs. 3,13,900/-. The said advance was duly disclosed in the Balance sheet of the appellant. The appellant was not aware of such requirement of the A.O. because the A.O. has not specifically asked such details. The confirmation letter of the said party with address of the same was also filed. The reasons for cancellation of the said transaction were not asked by the A.O. and the refund was received in cash because Mr. Ahire paid the same in cash and the assessee was supposed to receive the said amount which was stuck up with Mr. Ahire and when the refund of the advance was received the appellant was not in position to ask for the same through banking channel as he was under fear of having become the said advance as bad.
2. The A.O. has disbelieved the transaction for the reason that the appellant has not furnished the documentary evidence in respect of the said transaction. In this respect it is to be stated that the above contention of the A.O. is made as if the appellant is taken advance from the party. The A.O., in the present case, has not appreciated that the appellant has not received the advance, what he has received is the refund of

advance already given. Further the agreement, if any, would be with the person who has made ultimate payment, which in the present case was made by Mr. Ahire. The confirmation of the said party was filed and thereafter no query was raised by the A.O. in this respect, therefore the appellant was under impression that the A.O. is satisfied with the submission made in this behalf. However we kindly request your honour to direct A.O. to verify the actual fact with Mr. Ramchandra D Ahire.

3. As the said person, probably, was agriculturist, perhaps he was not having PAN. His address is on record as mentioned on the enclosed confirmation letter. Further as on day of the compliance there was no any amount outstanding as receivable from the said party, it was difficult to get complete cooperation from the said party, particularly when the transaction with the said party was not materialized.

4. After careful perusal of the reasons given by the A.O. on this issue, it transpired that the impugned addition is made by the A.O. under the assumption that Mr. Ramchandra Ahire is non-existent or fictitious person. Such doubt of the A.O. is baseless mainly when there is receipt of advance already given and which was well reflected in the financial statements of the appellant and it is not a case where there is only credit in the account of the said party. However the copy of Voter identity card issued by Election Commission of India is enclosed herewith as a proof of genuineness of the person. We kindly request your honour to admit the same as additional evidence as the same was not filed before the A.O., because there was no issue of the genuineness of the party and the appellant was not in position to understand what is cooking in the mind of the A.O.

The doubt of the A.O. regarding the advance so given to Mr. Ahire is absolutely baseless because if the advance was not given to Mr. Ahire then to that extent the cash on hand of the appellant would have been increased, therefore there is no effect of the same on the cash of the appellant.

The impugned addition is not made by the A.O. on the basis of any seized material, however the impugned addition is made by the A.O. on the basis of financial statements of the appellant.

The non application of mind of the A.O. is also appeared from the order itself because he has made reference to the para Nos. 3 & 4 as confining para as mentioned in the said order, but the fact is different.

Therefore in such circumstances, the impugned addition made by the A.O. please be deleted as the same is made on the basis of hypothesis and without application of mind."

9.3 The submission of the assessee was sent to Assessing Officer for his comments, who vide his report dated 28.03.2012 stated that the cash advances forwarded were received back in cash only as the transactions were never finalized. According the Assessing Officer, the assessee used this modus operandi to introduce his own unaccounted and unexplained monies by way of cash advances forwarded and received within the family or his loyal persons. The relevant portion of the report is as under:

"The assessee himself admitted that the advance against property was refunded due to cancellation of the terms. In the assessment order, the same stand was highlighted that the cash advances were introduced by the way that were received back in cash only as the transactions were never finalized. The assessee used this modus operandi to introduce his own unaccounted and unexplained monies by way of cash advances forwarded and received within the family or his loyal persons. At the appellate stage, the assessee buys time to manage the said affair by concocting the issue according to his comfort. The issue was asked timely to proving the genuineness that was not availed by the assessee during the assessment proceedings. However, the cash advanced forwarded or received are very apparent later on cancelled in each case and refunded or received back by the assessee. Hence, the contention of the assessee is fabricated and has no evidential strength."

9.4 The copy of the report of the Assessing Officer was supplied to the learned Authorized Representative of the assessee for his

comments and he has made counter comments vide his letter dated 30.03.2012, which is as under:

"The said advances which were given and also the refund of the same are very well disclosed in the balance sheet of the appellant. The doubt of the A.O. regarding the advance so given to Mr. Ahire is baseless because if the advance was not given to Mr. Ahire then to that extent the cash on hand of the appellant would have been increased, therefore there is no effect of the same on the cash of the appellant. This is not a case of taking any loan or advances or creation of any liability."

In this background the Authorized Representative submitted to delete the impugned addition made on account of refund of advance received by the assessee. Agreeing to the same, the addition in question was deleted by the CIT(A). The same has been opposed before us on behalf of revenue, inter alia submitted that the CIT(A) erred in deleting the addition of receipt on account of cancellation of property transaction of Rs. 3,13,900/-. Accordingly, the order of CIT(A) be set aside and that of Assessing Officer be restored on the issue. On the other hand, the learned Authorized Representative supported the order of CIT(A) on the issue.

9.5 After going through the rival submissions and material on record, we find that the impugned advances as well as refund of the same were shown in the balance sheet of the assessee of the respective years. The impugned addition is made by the Assessing Officer without observing the main principles of accounting as well as tax laws because the sources of giving the advance are not in dispute, then in such circumstances, if the impugned advance was not given then, there would have been no change on the cash position of the assessee. The allegation of the Assessing Officer that the accounts of the assessee were finalized only after the search action, was not justified because the assessee has always submitted the abridged cash positions as well as extracts of accounts of the

relevant parties, etc. with the original return of income until new scheme of e-filing of return of income was introduced. The contention of the Assessing Officer to disbelieve the transaction with Mr. Ahire that the same is not appearing in the capital account was rightly found illogical by the CIT(A) because when the amount given is shown as receivable in the Balance Sheet, then the same would never appear in the capital account. Further, the Assessing Officer has ignored the fact that this is not a case where any loan or deposit or advance is taken or credited. In the instant case, the amount already advanced was claimed to be received back by the assessee. The Assessing Officer has neither negated the contentions of the assessee with any evidence, nor has carried out any inquiries to negate the explanation of the assessee and confirmation of the party filed in this respect. In view of above and also in the light of the confirmation of the said party, the addition made by the Assessing Officer of ₹ 3,13,900/- on account of refund of advances was rightly held unjustified and the same was rightly deleted by the CIT(A) by reasoned factual finding. The same needs no interference from our side. We uphold the same.

10. The next issue relates to the disallowance of 50% of agricultural income of ₹ 52,753/- made by Assessing Officer for the reason that the assessee has not furnished the supporting evidences like sale pattis, market certificates bills for fertilizers, etc. to substantiate the correctness of the agricultural income.

10.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and CIT(A) having called for remand report from the concerned Assessing Officer and having called comments of assessee and considering the same, has deleted the addition in question. The same has been opposed before us on behalf of revenue inter alia submitted that the CIT(A) erred in deleting the disallowance of part

of agricultural income of ₹ 52,753/-, Accordingly, the same should be set aside and that of Assessing Officer be restored on the issue. On the other hand, the learned Authorized Representative supported the order of CIT(A) on the issue.

10.2 After going through the rival submissions and material on record, we find that a similar issue arose in ITA No.1384/PN/2012 for A.Y. 2007-08 in assessee's own case, wherein in similar facts and circumstances, we have decided the issue in favour of assessee vide para 4 of this order. Facts being similar, so following the same reasoning, we uphold the order of CIT(A), who has rightly deleted the addition of ₹ 52,753/- being 50% of agricultural income.

11. Next issue is with regard to addition on account of advance of ₹ 28,84,010/- shown to be received against the property as per balance sheet. Facts of the issue involved is that there was credit balance in the Balance Sheet of the assessee of ₹ 28,84,010/- in the name of family members. The Assessing Officer made the addition thereof.

11.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from the Assessing Officer and after calling the comments thereon from Authorized Representative on behalf of assessee, the CIT(A) granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on this issue.

11.2 We find that a similar issue arose in assessee's own case for A.Y. 2007-08 in ITA No.1384/PN/2012, wherein we have decided a similar issue in favour of assessee by upholding the order of CIT(A) vide para 5 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding

of CIT(A), who has rightly been deleted the addition made on account of advance of ₹ 28,84,010/- against the property by the Assessing Officer. We uphold the same.

12. The next issue is with regard to addition of ₹ 16,00,000/- on account of advance given to Mr. Hemant Modi in cash. The said transaction was duly recorded in the balance sheets of assessee as well as Mr. Hemant Modi. The Assessing Officer has added the impugned advance for the reasons mentioned in the assessment order.

12.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for the remand report from Assessing Officer and comments from the Authorized Representative on behalf of assessee, the CIT(A) has deleted the addition of ₹ 16,00,000/- made by Assessing Officer on account of advance given to Mr. Hemant Modi. The same has been opposed before us on behalf of revenue, inter alia submitted that the CIT(A) erred in deleting the addition on account of payment of advance for property at Rs. 16,00,000/- and requesting to set aside the order of CIT(A) on the issue and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative supported the order of CIT(A) on the issue.

12.2 After going through the rival submissions and material on record, we find that the advances given to Mr. Hemant Modi were disclosed in the balance sheet of the assessee at asset side as advance given and at the same time it is also undisputed fact that Mr. Hemant Modi has also shown in his Balance Sheet the impugned transaction of receipt of advance from the assessee. The impugned addition is made by the Assessing Officer is totally on surmises and not based on concrete findings. The moot point here is that the impugned advance whether fictitious or otherwise was

duly disclosed by the assessee in his financial statement at assets side. Once the source thereof was explained, there was no provision under the law to tax the said transaction. The assessee was having enough sources of fund to justify the said advance as he has offered additional income of ₹ 40,00,000/- during the year. There is no dispute as regards the source of investment because the advance received from Dineshkumar Lodha, Samyak Lodha, Sunil Runwal & Hemant Modi has already been held as genuine by the CIT(A). The actual nature of transaction may be different or the same may be temporary loans, etc. but that would not make the said transaction as taxable in the hands of the assessee mainly because the source thereof is explained. The approach of the Assessing Officer in taxing the liabilities and assets at the same time is not justified. Therefore, the CIT(A) was justified in deleting the addition made by the Assessing Officer on account of advance amounting to ₹ 16,00,000/- given to Mr. Hemant Modi. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

13. The next issue is with regard to addition of ₹ 95,31,626/- made on account of unexplained expenditure incurred on construction of bungalow. During the course of search action certain documents marked as Annexure A-3/2 & A-31 and A-3/24 were found and seized which contained some details of the expenses on the construction of bungalow of the assessee. The Assessing Officer made an addition thereof for the reasons mentioned in the assessment order.

13.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for the remand report from the Assessing Officer and comments from the Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The

same has been opposed before us on behalf of revenue. On the other hand, the Authorized Representative has supported the order of CIT(A) on the issue.

13.2 After going through the rival submissions and material on record, we find that, we find that a similar issue arose in assessee's own case for A.Y. 2007-08 in ITA No.1384/PN/2012, where we have decided the issue in favour of assessee vide para 6 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A), who has rightly been deleted the addition ₹ 95,31,626/- made by Assessing Officer on account of unexplained expenditure incurred on construction of bungalow. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

14. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

15. In ITA No.1386/PN/2012 for A.Y. 2009-10, the revenue has file the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A), erred in deleting the addition of Rs. 32,932/- made by disallowance of part of agriculture income shown in the return.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of receipt of advance for property at Rs. 10,50,000/-.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of advance against property at Rs. 5,60,000/-.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on

account of unexplained expenditure made on the basis of seized documents in the construction of bungalow amounting to Rs. 41,97,432/-

5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of investment in silver articles of Rs.10,69,291/-.
6. On the facts and in the circumstance of the case and in law, the learned CIT(A), erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
7. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
8. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

16. The first issue is with regard to disallowance of 50% of agricultural income of ₹ 32,932/- made by the Assessing Officer.

16.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from the Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

16.2 After going through the rival submissions and material on record on the issue, we find that a similar issue arose in assessee's own case for A.Y. 2007-08 in ITA No.1384/PN/2012, where the issue has been decided in favour of assessee by upholding the order of CIT(A) vide para 4 of this order and followed the same in A.Y. 2008-09 in ITA No.1385/PN/2012. Facts being

similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) whereby, he has deleted the addition in question. We uphold the same.

17. The next issue is with regard to addition made by Assessing Officer on account of advance of ₹ 10,50,000/- shown to be received against the property as per balance sheet.

17.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

17.2 After going through the rival submissions and material on record, we find that a similar issue arose in the assessee's own case in A.Y. 2007-08, wherein we have decided the similar issue in favour of assessee vide para 5 of this order and the same followed in A.Y. 2008-09. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has rightly deleted the addition of ₹ 10,50,000/- made by Assessing Officer on account of advance. We uphold the same.

18. The next issue is with regard to addition made by Assessing Officer of ₹ 5,60,000/- on account of advance given to Mr. Vijaykumar Lodha HUF in cash.

18.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee,

the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

18.2 After going through the rival submissions and material on record, we find it undisputed that the advance given to Mr. Vijaykumar Lodha, HUF was disclosed in the balance sheet of assessee at assets side as advance given and at the same time, it was also found undisputed that Mr. Vijaykumar Lodha, HUF has shown the same in his balance sheet. The impugned addition made by Assessing Officer was not justified because the assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 46 lacs during the year. The Assessing Officer was not justified to ask for agreement, etc. particularly when there was no dispute as regards the source of investment, because the advance received from Mr. Dineshkumar Lodha and Mr. Sunil Runwal were already held genuine by the CIT(A). The approach of Assessing Officer in taxing liability and assets at the same time not logical. In view of above factual and legal discussion, the Assessing Officer was not justified in making the addition of ₹ 5,60,000/- on account of advance given to Mr. Vijaykumar Lodha, HUF. The same was rightly deleted by the CIT(A). We uphold the same.

19. The next issue is with regard to the addition of ₹ 41,97,432/- made by Assessing Officer on account of unexplained expenditure incurred on bungalow construction.

19.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee,

the CIT(A) has granted the relief to the assessee vide para 9.4 of his order. The same has been opposed before us on behalf of revenue.

19.2 In this regard, we find that a similar issue arose in the assessee's own case in A.Y. 2007-08, wherein we have decided the issue in favour of assessee vide para 6 of this order and the same has been followed in A.Y. 2008-09. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has rightly deleted the addition in question. We uphold the same.

20. The next issue is with regard to addition of ₹ 10,69,291/- made on account of expenditure on purchase of silver utensils. During the course of search action, some noting were found as per documents placed in Annexure No. A-3/21 which in the opinion of the Assessing Officer were regarding the purchase of silver utensils. Therefore, on the basis of the said noting, the Assessing Officer held that the said silver utensils were purchased by the assessee during the year under review. Accordingly, he made addition thereof of ₹ 10,69,291/- for the reason that the assessee failed to explain the sources of the said investment.

20.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue, inter alia submitted that the CIT(A) erred in deleting the addition on account of investment in silver articles of Rs.10,69,291/- and requested to set aside the order of CIT(A) on the issue and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative supported the order of CIT(A) on the issue.

20.2 After going through the rival submissions and material on record, we find that the impugned purchase of silver utensils is related to the marriage of Shaishvee i.e. daughter of the assessee, which took place in the F.Y. 2002-03. In fact, the initial onus is on the Assessing Officer to establish that the said purchases were affected during the year under appeal. The Assessing Officer never discharged the said onus casted on him. On the contrary, when the learned Authorized Representative has specifically pointed out the proofs of actual time of purchase of the said silver utensils from the same sized material, the Assessing Officer instead of verifying the same is asking for the bills, etc to prove the claim of the assessee. The Assessing Officer was not justified to have adhoc approach while dealing with the claims of the assessee. There is nothing on record to suggest that to treat the said purchases of silver utensils as made during the year under appeal. The claim of the assessee has been that the quantity of silver found during the course of search action is not excess of the sources of the same as explained by the assessee was not rebutted by the Assessing Officer. Therefore, in the above factual background, the Assessing Officer was not justified to make addition on account of purchase of silver utensils as the same was not incurred during the year under appeal. Therefore, the same has rightly been deleted by the CIT(A). This factual reasoning needs no interference from our side. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

21. As a result, this appeal filed by revenue as well as the corresponding cross objection of assessee, are dismissed.

22. In ITA No.1820/PN/2012 for A.Y. 2010-11, the revenue has filed the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of

part of agriculture income at Rs. Rs. 47,708/- even though the assessee has not produced any cogent evidence in respect of his claim of the Agricultural income.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of advance for property at Rs. 4,79,500/- even though the assessee could not establish the source of the advance of Rs. 4,79,500/- with any cogent evidence.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the declaration of additional income of Rs. 17,66,670/- was made under section 132(4) of the Act and was based on incriminating evidence found during the course of search and seizure operations.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on records.
5. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
6. The appellant prays leave to adduce such further evidence to substantiate its case as occasion may demand.

23. The first issue is with regard to disallowance of 50% of agricultural income of ₹ 47,708/- made by the Assessing Officer.

23.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. In this regard, we find that a similar issue arose in the assessee's own case in A.Y. 2007-08, wherein we have decided the issue in favour of assessee

vide para 4 of this order and the same has been followed in A.Y. 2008-09 & 2009-10. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has rightly deleted the addition in question. We uphold the same.

24. The next issue is with regard to addition made by Assessing Officer of ₹ 4,79,500/- on account of receipt of refund of advance against property.

24.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue.

24.2 After going through the rival submissions and material on record, we find that the impugned advance as well as refund of same was shown in the balance sheet of assessee of respective years. The impugned addition was made by the Assessing Officer without observing the rudimentary principles of accounting as well as tax laws, because the source of giving advance was not in dispute. Then in such circumstances, if impugned advance was not given, then, there would have been no change of cash position of assessee. The Assessing Officer has ignored the fact that this is not a case where any loan or deposit or advance is taken or credited, in the present case, the amount already given is claimed to be received back by the assessee. The Assessing Officer has not rebutted the stand of assessee with any cogent evidence or reasoning in this regard. Therefore, considering the above facts and also confirmation of said party, the addition made by Assessing Officer of ₹ 4,79,500/- on account of refund of advance given was not

justified and the same was rightly deleted by the CIT(A) by reasoning finding. We uphold the same.

25. The next issue relates to the addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s. 132(4) during the search action. The brief facts of the issue are that a statement of Mr. Dineshkumar Lodha was recorded u/s. 132(4) on 10.07.2009. In the said statement in answer to question No.20, an amount of ₹ 1.04 crore was offered as additional income of three brothers and their respective wives i.e. Mr. Vijaykumar Lodha, Mr. Dineshkumar Lodha, Mr. Dineshkumar Lodha, Mrs. Saroj V. Lodha, Mrs. Sujata D. Lodha and Mrs. Suman A. Lodha. No breakup of the disclosure or specific reference to any seized material or investment or expenditure was made in respect of the said disclosure. The Assessing Officer made addition of 1/6th of the said disclosure of ₹ 1.04 crore in the hands of assessee for the reason that the assessee or the persons on whose behalf the said disclosure was given, have not disclosed the same in their returns of income.

"Q. No. 20 I am explaining you the provision of section 271(l)(c) explanation 5 r.w.s. 271 AAA. What you like¹ to say?

Ans: Yes, we have to avail the benefits of above provisions. We have already disclosed Rs. 1.47 crores in the residential premises of Shri. Dineshkumar B. Lodha. Now, we are hereby disclosing the amount of Rs. 1.04 Crores as additional income of we three brothers namely Shri. Vijaykumar B. Lodha, Shri. Dineshkumar B. Lodha, Shri Anilkumar B. Lodha, Sau. Saroj V. Lodha, Sau. Sujata D. Lodha and Sau. Suman A. Lodha. The breakup of this disclosure person wise and year wise will be given after receipt of the xerox copies. This will cover expenditure, investments, errors and omissions"

25.1 The Assessing Officer solely relied on the above referred statement for making impugned addition. The stand of the assessee has been that after verification of the entire seized record the assessee has filed the returns of income for the years involved after

considering the contents of seized material, investments, expenses incurred, bank account, etc. It was further argued on behalf of assessee that no addition could be made solely on the basis of adhoc disclosure made during the course of search action. The Assessing Officer already completed the assessments of the group cases after separately considering the entire seized material, investments, expenditure, etc. of the assessee as well as his other family members. The relevant portion of the submission on behalf of assessee in this regard is as under:

"During the course of recording of statement U/s. 132(4) on 10/07/2009 in reply to Q. No. 20, Mr. Dineshkumar B. Lodha and his brothers, disclosed additional income of Rs. 1.04 crores in addition to Rs. 1.47 crores , which were disclosed as additional income separately. This income was disclosed on adhoc basis without specifically referring to any seized material or investment or expenditure. The said disclosure was stated to be given on behalf of the appellant and his brothers and their wives. However ignoring the facts of the case as well as actual offered additional income of around Rs. 170 lacs on the basis of seized material, investments, expenditure, etc. , the A.O. has made addition of Rs. 17,66,670/- (1/6 th of Rs. 1.04 crores i.e. income offered during the course of search action) on the basis that the appellant has not furnished break up submission.

The actual fact and submission of the appellant in respect of above is as under-The appellant group has offered following income for the year under review in the return of income filed u/s. IMA of the Act -

Name	A.Y. 2008-09	A.Y. 2009-10	A.Y.2010-11
Mr. Vijaykumar Lodha	Rs. 40,00,000	Rs. 46,00,000	-----
Mr. Dineshkumar Lodha	Rs. 10,00,000	Rs. 15,00,000	-----
Mr. Anilkumar Lodha	Rs. 10,00,000	Rs. 15,00,000	-----
M/s. B. M. Lodha & Sons		Rs. 15,46,000	Rs.2,32,000
Saroj V. Lodha		Rs. 5,18,000	
Sujata D. Lodha		Rs. 5,18,000	
Suman A. Lodha		Rs. 5,18,000	

Total	Rs. 60,00,000	Rs.1,07,00,000	Rs.2,32,000

As seen from above (he appellant group has already disclosed around 170 lacs. The impugned addition is not justified for the following reasons-

1. The said disclosure was made on adhoc basis without specifically referring to any seized record or investment or expenditure, etc. 'Therefore no cognizance of the same should be taken. It is also a matter of fact that in the group cases the assessments are completed after considering entire seized record with reference to investments or expenses of each person independently and the basis of adhoc disclosure given during the course of search action was to cover things i.e. seized material, investment and expenditure. In such circumstances when the entire seized material as well as investments and expenditure, etc. are already considered by the A.O. while making independent assessments of group cases, he is not justified in making again addition of the same on adhoc basis.

2. The presumption U/s. 132(4A) is rebuttable and the same are applicable to search proceedings and not to assessment proceedings. This view is endorsed by Supreme Court in the case of P.R. Metrani vs CIT 287 ITR 209. Therefore in the present case the addition solely on the basis of statement without basing the same to any seized material or investment or expenditure or income is not justified particularly when all the investments, income, expenditure including household expenses are already considered in the return of income filed by the appellant and no any incriminating material is found as a result of search action or investigation carried on by the A.O. In such circumstances addition should not have been made only on the basis of statement recorded U/s. 132(4) because statement U/s. 132(4) is to be recorded w.r.t. seized record or money or bullion, etc. The reliance is placed on the decision of Andhra Pradesh High Court in the case of CIT vs Shri Ramdas Motor Transport 238 ITR 177. The reference is also made to circular No. F.No. 286/2/2003- IT (Inv.) dated 10th March, 2003 as referred by Madras High Court in the case of M. Narayanan & Bros, vs ACIT 60 DTR 233 that 'C.B.D.T. has given categorical directions to departmental/officers that undue emphasis should not be placed on the recorded statements.

25.2 Considering the submission on behalf of assessee, the CIT(A) has deleted the addition in question. The same has been opposed before us on behalf of revenue, inter alia stated that the CIT(A) was not justified in deleting the addition of ₹ 17,66,670/-

made on the basis of declaration of additional income u/s.132(4) of the Act and the same should be set aside and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative supported the order of CIT(A).

25.3 After going through the rival submissions and material on record, we find it undisputed that disclosure was made on behalf of the assessee to cover expenditure, investments, errors and omissions. It was found that the assessments of all the parties to the impugned disclosure were completed by the same Assessing Officer after considering the seized record as well as investments and expenditure. Therefore, the CIT(A) observed that once the Assessing Officer has specifically and individually considered the seized record, expenditure and investments for the purpose of assessment and made additions accordingly, then the Assessing Officer should not have made any adhoc addition for the same reason. The evidentiary value of the disclosure will have weight only if the same is made with reference to any seized document or valuable or expenditure, etc. The relevant portion of the provisions of subsection (4) of section 132 is as under:

"The authorized officer may, etc. The relevant portion of the provisions of subsection (4) of section 132 are as under:

"The authorized officer may, during the course of the search or seizer, examine on oath any person who is found to be in possession or control of any books of accounts, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act."

From the above provisions of subsection (4) of section 132 it is clear that the statement u/s. 132(4) should be confined to any books of accounts, documents, money, bullion, jewellery or other valuable article or thing found in possession of the assessee and then only

the said statement could be used as evidence. The Central Board of Direct Taxes vide circular No. F.No. 286/2/2003 -IT (Inv.) dated 10th March, 2003 has also specifically directed the field officers not to insist for disclosure or confessions during the course of search action if there is no credible evidence. In the present case, no evidence was found to support such a disclosure. Therefore, the CIT(A) was justified in deleting the addition of ₹ 17,66,670/- made by the Assessing Officer on the basis of a statement and in absence of any evidence thereof. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

26. As a result, this appeal of the revenue as well as corresponding cross objection of assessee, are also dismissed.

The ITA Nos.1387, 1388 & 1959/PN/2012 for A.Ys. 2008-09, 2009-10 & 2010-11 pertain to Shri Anilkumar Bhagchand Lodha.

27. In ITA No.1387/PN/2012 for A.Y. 2008-09, the revenue has filed the appeal on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A), erred in deleting the addition of Rs.22,950/- made by disallowance of part of agriculture income shown in the return.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained advances against property amounting to Rs. 2,50,000/-.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained personal expenses on the basis of seized documents amounting to Rs. 2,40,411/-.
4. On the facts and in the circumstance of the case and in law, the learned CIT(A), erred in ignoring the evidence on record in the form of incriminating materials on the basis of

which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.

5. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.

6. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

28. The first issue is with regard to the disallowance of 50% of agricultural income of ₹ 22,950/- made by the Assessing Officer.

28.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

28.2 After going through the rival submissions and material on record, we find that a similar issue arose in the case of Shri Vijaykumar B. Lodha in ITA No.1384/PN/2012 in A.Y. 2007-08 wherein we have decided the issue in favour of assessee vide para 4 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has rightly deleted the addition of ₹ 22,950/- on account of disallowance of 50% of agricultural income. We uphold the same.

29. The next issue is with regard to addition made by Assessing Officer of advances of ₹ 2,50,000/- given to Anilkumar B. Lodha (HUF) for the main reasons that the assessee has not furnished the details of the payments made or purchase of property, etc.

29.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue.

29.2 After going through the rival submissions and material on record, we find that advance given was disclosed in the balance sheet of assessee at assets side as advance given and at the same time, it is also not in dispute that the said Anilkumar B. Lodha (HUF) has also shown in his balance sheet the impugned transaction of receipt of advance from the assessee. The impugned addition has been made by the Assessing Officer totally on surmises and conjecture. The Assessing Officer has always in the group cases, assumes that the advance given or received back and disclosed in the balance sheet as unaccounted or unexplained money. This assumption of Assessing Officer without any base or logic because the advance was duly disclosed by the assessee in the balance sheet. Therefore, the same could not be held as unaccounted or unexplained. In such a situation, only option left with the Assessing Officer to verify the source of such investment or assets. In the present case, source thereof is not in dispute. Therefore, the Assessing Officer was not justified to look for same in capital or other account while the impugned advance was disclosed by the assessee as receivable in balance sheet. It is also not in dispute that the assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 10,08,110/- during the year. Therefore, the Assessing Officer was not justified in making the addition on account of advance given to Anilkumar B. Lodha amounting to ₹ 2,50,000/-. The same was rightly deleted by the CIT(A) by cogent reasoning. We uphold the same.

30. The next issue is with regard to addition of ₹ 2,40,411/- on account of expenditure incurred with reference to some seized documents. The fact of this issue is that during the course of search action a paper (page no. 2, Annexure A/3) was seized from the residence of the assessee, which contains some noting in respect of certain expenses incurred by the assessee. The Assessing Officer made the addition of the said expenses as noted on the said page for the reason that the assessee has not furnished the details of withdrawals made for incurring the said expenditure.

30.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue inter alia submitted to set aside the order of CIT(A) and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

30.2 After going through the rival submissions and material on record, we find that the said transaction of purchase of gold ornaments was accounted in the balance sheet of Anilkumar B. Lodha which could be out of the advance of ₹ 2,50,000/- given by the assessee to Anilkumar B. Lodhar (HUF), The contention of the Assessing Officer that the assessee has not furnished the details of withdrawals made for incurring these expenses is not justified because the said purchase of gold ornaments was separately shown as assets in the balance sheet, there was no need to charge the same to capital account. The contention of assessee is that gold found during the course of search action is not excess with the assessee or his family, not rebutted by the Assessing Officer by cogent reasoning. In view of this, the Assessing Officer was not

justified to make addition of ₹ 2,40,411/- and the same was rightly deleted by the CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

31. As a result, this appeal filed by revenue as well as corresponding cross objection of assessee, are dismissed.

32. In ITA No.1388/PN/2012 for A.Y. 2009-10, the revenue has filed the appeal on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained advances against property amounting to Rs. 5,50,086/-.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained personal expenses on the basis of seized documents amounting to Rs. 4,89,077/-.
3. On the facts and in the circumstance of the case and in law, the learned CIT(A), erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
4. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
5. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

33. The first issue is with regard to addition of advance given of ₹ 1,50,086/- to Anilkumar B. Lodha (HUF) and other parties of ₹ 4,00,000/-. The fact of this issue is that the assessee gave advances to the parties, which were disclosed in the financial statements of the assessee. The Assessing Officer has added the impugned advances for the main reason that the assessee has not furnished the details of the payments made for purchase of the

property and modes of such payments transacted either through the capital account of the assessee or otherwise.

33.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

33.2 After going through the rival submissions and material on record, we find that advance given was disclosed in the balance sheet of assessee at assets side as advance as given and at the same time, it is also not in dispute that the said Mr. Anilkumar B. Lodha (HUF) has shown the same in his balance sheet as transaction of receipt of advance from the assessee. Mr. Anilkumar B. Lodha (HUF) cannot be fictitious one once he has regularly assessed to income tax and having valid PAN. The impugned addition is totally made by the Assessing Officer on surmises and completely on the basis of wrong finding. In the present case, the source of advance is not in dispute. The loan was separately shown as at assets side to balance sheet and the same would not appear as withdrawal from capital. Therefore, the Assessing Officer was not justified to look for same in capital or other accounts when the impugned advance was disclosed by assessee as receivable in his balance sheet. The Assessing Officer was not justified in doubting the advance in question. On perusal of details, it is observed that the said advance is received from Shri Bhagchandji Lodha ₹ 1,00,000/-, Smt. Sujata Lodha ₹ 1,30,000/- and Smt. Suman Lodha ₹ 3,36,000/-. All these parties are assessed with the Assessing Officer himself and they have shown impugned

transactions in their balance sheets. In such a situation, when source of advance is not in dispute, then, advance given was out of same or person to whom the advance should not be doubted. Further, it is not in dispute that the assessee had enough sources of funds to justify the said advance as he has offered an additional income of ₹ 15,00,000/- during the year. In view of above, the Assessing Officer was not justified in making the addition on account of advance given of ₹ 5,50,086/- and the same was rightly deleted by the CIT(A). We uphold the same.

34. The next issue is with regard to addition made by the Assessing Officer of ₹ 4,89,077/- on account of expenditure incurred with reference to some seized documents.

34.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

34.2 After going through the rival submissions and material on record, we find that expenses as per the said noting of the seized material are already charged by the assessee to its capital account. Further, the contention of assessee that noting expenses on page No.6 to 25 of Bundle No.A-2 are of ₹ 47,774/- and not of ₹ 93,374/- as considered by the Assessing Officer was not rebutted by him. The assessee was having enough sources of funds during the year as he has offered an additional income of ₹ 15,00,000/- in the return of income. Therefore, on the basis of above, the Assessing Officer was not justified in making addition of ₹ 4,89,077/-. The same was rightly deleted by the CIT(A). We uphold the same. The

assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

35. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

36. In ITA No.1959/PN/2012 for A.Y. 2010-11, the revenue has filed the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agricultural income at Rs.68,062/-even though the assessee has not produced any cogent evidence in respect of his claim of the agricultural income.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of advance for property at Rs. 2,26, 399/-
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unexplained expenditure on the basis of seized documents amounting to Rs.61,068/-.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the declaration of additional income of Rs. 17,66,670/- was made under section 132(4) on the Act and was based on incriminating evidence found during the course of search and seizure operation.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on records.
6. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per circumstances of the case.
7. The appellant prays leave to adduce such further evidence to substantiate its case as occasion may demand.

37. The first issue is with regard to disallowance of part of agricultural income of ₹ 68,062/- by the Assessing Officer.

37.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

37.2 In this regard, we find that a similar issue arose in ITA No.1384/PN/2012, wherein we have decided the issue in favour of assessee vide para 4 of this order and followed in other cases also. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A). We uphold the same.

38. The next issue is with regard to addition of 2,26,399/- on account of payment for fictitious property transaction.

38.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

38.2 After going through the rival submissions and material on record, we find that advance in question given is disclosed in the balance sheet of assessee at assets side as advance was given and at the same time, it is also not in dispute that the parties to whom the advance is shown to be given have also shown the same in their balance sheets. In this background, the Assessing Officer was not justified in making the addition of the same. The source is not in

dispute as the assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 25,00,000/- in the earlier years. Therefore, on the basis of above factual and legal position, the addition of ₹ 2,26,399/- by the Assessing Officer on account of advance given to Anilkumar B. Lodha (HUF), Thomas Cook Co. Ltd. and M/s. M.K. Associates netting out with addition of ₹ 9,11,186/- on similar ground made in assessment of earlier year, was not justified. The Assessing Officer has also made calculation error in this regard as discussed by CIT(A) in para 7.3 of its order. Therefore, taking all facts and circumstances, the CIT(A) was justified in deleting the addition of ₹ 2,26,586/- made by Assessing Officer on account of advance in question. We uphold the same.

39. The next issue is with regard to addition made by the Assessing Officer of ₹ 61,068/- on account of expenditure incurred with reference to some seized documents.

39.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

39.2 After going through the rival submissions and material on record, we find that tour expenses of ₹ 63,773/- of Kashmir tour was duly disclosed by the assessee to capital account as his personal drawing. The Assessing Officer has made the addition of ₹ 61,068/- on the basis of noting on seized paper No.34 to 72 of Annexure A-2 for the reason that the assessee has not furnished the supporting documents pertaining to the said tour expenses of ₹

61,068/- as claimed by the assessee and debited to the capital account of the assessee. The stand of the assessee has been that the assessee and his wife went for Kashmir tour during the year under appeal and expenses on the said travel of ₹ 63,773/- which were inclusive of impugned amount of ₹ 61,068/- were made out of withdrawal from firm, in which, the assessee is a partner and other income, etc. The Assessing Officer has not brought on record any evidence of any amount having paid by the assessee over and above ₹ 63,773/- or he has carried out any enquiry in this respect. Therefore, the CIT(A) was justified in deleting the addition of ₹ 61,068/- made by the Assessing Officer. We uphold the same.

40. The next issue is with regard to addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s.132(4) during the search action.

40.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

40.2 After going through the rival submissions and material on record, we find that a similar issue arose in ITA No.1820/PN/2012, wherein we have decided the similar issue in favour of assessee vide para 25 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has deleted the addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s.132(4) during the search action. We

uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

41. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

The ITA Nos.1542, 1960 & 2245/PN/2012 for A.Ys. 2008-09, 2009-10 & 2010-11 pertain to Shri Dineshkumar Bhagchand Lodha.

42. In ITA No.1542/PN/2012 for A.Y. 2008-09, the revenue has filed the appeal on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of receipt of refund of advance of Rs.2,21,250/-, without appreciating that the assessee has not produced any satisfactory evidence that this amount infact-been receipt of refund of advance.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agriculture income at Rs.65,752/- without appreciating that the assessee has not produced any satisfactory evidence in support of agricultural income.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of advance against property at Rs.2,80,000/- without appreciating that the assessee has not explained the source of such advances with the regular books of accounts.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs. 31,00,000/-, on account of admitted declaration u/s. 132(4) at Rs.41,00,000/- without appreciating that the said declaration was made on the basis of incriminating seized material and such documents has evidentiary value.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in ignoring the evidence on record in the form of incriminating materials on the basis of

which the various additions were made, thus, rendering the decision perverse and contrary to the evidence on record.

6. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
7. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

43. The briefly the facts of the case are that the assessee is an individual having Income from Salary, Capital Gain, interest income from firms in which the assessee is a partner, etc. The assessee is regularly assessed to income tax. The first issue is with regard to addition of ₹ 2,21,250/- on account of receipt of refund of advance in cash from Mr. Satish D. Ahire, which was deleted by the CIT(A). The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

43.1 After going through the rival submissions and material on record, we find that the impugned advance as well as refund of the same was shown in the balance sheet of assessee of respective years. The Assessing Officer has ignored the basic principle of accounting as well as tax because the source of giving of advance is not in dispute, then, in such circumstances, such advance was not given, then, there would have been no change of cash position of the assessee. The allegation of Assessing Officer that accounts of assessee were finalized only after search is not correct because the assessee has always submitted abridged cash position as well as extract of accounts of relevant parties, etc. with original return of income, until new scheme of e-filing was introduced. The stand of the Assessing Officer to displease the transaction with Mr. Ahire that the same is not appearing in capital account is not justified because when the amount is given shown as respectively in the balance sheet, then, same would never appear in the capital

account. The Assessing Officer has ignored the fact that this is not a case where any loan of deposit or advance is taken or credited. In the present case, the amount already given is claimed to be received back by the assessee. The Assessing Officer has not disputed of this contention of assessee with any cogent evidence or reasoning. In view of above, the Assessing Officer was not justified in making the addition of ₹ 2,21,250/- on account of refund of advance given and the same was rightly deleted by CIT(A). We uphold the same.

44. The next issue is with regard to disallowance of 50% of agricultural income of ₹ 65,752/-. In appeal, the learned Authorized Representative on behalf of assessee submitted that the assessee has own 19.42 acres of irrigated land and also the agricultural income thereon. In appeal, the CIT(A) having called for remand report from the Assessing Officer and comments from the assessee, granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

44.1 After going through the rival submissions and material on record, we find that a similar issue originally arose in ITA No.1384/PN/2012, wherein we have decided the issue in favour of assessee vide para 4 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A) who has rightly deleted the addition in question. We uphold the same.

45. The next issue is with regard to disallowance of advances given of ₹ 2,50,000/- to Mr. Vijaykumar B. Lodha & ₹ 30,000/- to Mr. Saurabh D. Lodha, which was reflected in the balance sheets of the assessee as well as Vijaykumar B. Lodha and Sourabh D. Lodha.

45.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee. The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

45.2 After going through the rival submissions and material on record, we find that advance given was disclosed in the balance sheet of the assessee at assets side as advance was given and at the same time, it is not in dispute that the parties to whom the advance is shown to be given have also shown impugned transactions in their balance sheets as advance from the assessee. Both these persons are assessed to income tax and having PAN. The source of advance is not in dispute in the case before us. The assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 10,00,000/- during the year. In view of above, the Assessing Officer was not justified in making the impugned addition on account of advance was given to Vijaykumar Lodha and Saurabh Lodha totaling to ₹ 2,80,000/-, which was rightly deleted by CIT(A). We uphold the same.

46. The next issue is with regard to addition of ₹ 31,00,000/- on the basis of difference in the disclosure made u/s.132(4) and the additional income offered in the return of income filed u/s.153A. The assessee has disclosed the additional income of ₹ 41 lacs for the year under appeal in the statement recorded u/s.132(4) of Act. The assessee has offered ₹ 10 lacs as an additional income in the return of income. The Assessing Officer has made the impugned addition being the difference in the amount disclosed u/s.132(4)

and the amount offered as an additional income in the return of income for the year under appeal.

46.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee, wherein the CIT(A) having called for the remand report from the Assessing Officer and comments thereof from the assessee, granted the relief to the assessee. The same has been opposed before us on behalf of revenue and submitted that the CIT(A) erred in deleting the addition of ₹ 31 lacs on account of admitted declaration u/s.132(4) at ₹ 41 lacs without appreciating that the said declaration was made on the basis of incriminating seized material and such documents has evidentiary value. Accordingly, the order of CIT(A) be set aside and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative supported the order of CIT(A).

46.2 After going through the rival submissions and material on record, we find that it is apparent that the assessee and his two brothers Shri Vijay Kumar Lodha and Shri Anil Kumar Lodha have disclosed the additional income of ₹ 60 lacs in the return of income for the year under appeal as against disclosure u/s. 132(4) at ₹ 41 lacs. All these three persons are assessed to tax by the same Assessing Officer. The impugned addition is made by the Assessing Officer for the main reason as mentioned by him in the report that the details of additional income were not provided to him by the assessee group. As the additional income offered in the return of income is more than the income disclosed u/s.132(4) of ₹ 41 lacs, any further addition of ₹ 31 lacs was not justified and the same has rightly been deleted by the CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

47. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

48. In ITA No.2245/PN/2012 for A.Y. 2009-10, the revenue has filed the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of 12,00,000/-, being unexplained advances for property given to Shri Deepak Bakre without appreciating that the assessee has not explained to the satisfaction of the Assessing Officer the source of such advances with documentary evidence.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in admitting evidence in violation of Rule 46A of the Income Tax Rule, which was not presented before the Assessing Officer in respect of the identity of Shri Deepak Bakre.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agriculture income of Rs.44825/- without appreciating that the assessee has not produced any cogent evidence in support of agricultural income.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs. 3,50,000/- being unaccounted and unexplained advances forwarded /received back within the family members without appreciating that the assessee has not explained to the satisfaction of the Assessing Officer the source of such advances with documentary evidence.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs. 91,00,000/- on account of admitted declaration under section 132(4) of the Act at Rs.1,06,00,000/- without appreciating that the said declaration was made on the basis of incriminating seized material and such documents as well as the statement under section 132(4) of the Act have evidentiary value.
6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the addition on account of unexplained marriage expenses of assessee's daughter to Rs.5,20,578/- as against addition made of Rs.

1,18,69,341/- which was based on incriminating seized documents.

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs. 1,22,201/-, made on the basis of seized documents being in the nature of unaccounted expenditure on the marriage expenses of assessee's daughter.
8. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
9. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
10. The appellant prays leave to adduce such further evidence to substantiate its case as the occasion may demand.

49. The first issue is with regard to addition of ₹ 12 lacs made on account of advances given to Mr. Deepak R Bakre in cash.

49.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee by observing as under

“6.4 I have carefully considered the facts of the case, the assessment order, the report of the A.O. and the rival submissions. It is a matter of fact that the advances given are disclosed in the balance sheet of the appellant at asset side as advance given and at the same time it is also not disputed fact that Mr. Deepak Bakre has also shown in his Balance Sheet the impugned transaction of receipt of advance from the appellant. The contention of the A.O. that Mr. Deepak Bakre is fictitious person is not correct when he is regularly assessed to income tax having valid PAN. The contention of the A.O. that the impugned advance is received back is also not correct as

no refund of the same is received by the appellant either during the year or subsequently. 'The impugned addition is made by the A.O. totally on surmises and completely on the basis of wrong findings as mentioned above. The reference given by the A.O. in the assessment order to para No. 3 & 4 as confining paras in the assessment order is also misplaced. The contention of the appellant that when the said advance is separately shown at the asset side of the Balance Sheet, then the same would not appear as withdrawal from the capital is also correct and, therefore, the A.O. is not justified to look for the same in the capital or other account when the impugned advance is disclosed by the appellant as receivable in his Balance Sheet. The moot point here is that the impugned advances, whether fictitious or otherwise, are disclosed by the appellant in his financial statement at asset side and when the sources thereof are explained, there is no provision under the law to tax such transactions. It is also a matter of fact that the appellant is having enough sources of fund to justify the said advance as he has offered additional income of Rs. 15,00,000/- during the year. Therefore, the A.O. is not justified to ask for the agreement, etc particularly when there is no dispute as regards to the source of investment, because the advance received from Sayli Lodha is also disclosed by her in her Balance Sheet and whose assessment is also completed by the same A.O. at the same time. The actual nature of transaction may be different or the same may be temporary loans, etc. but that would not make the said transaction as taxable in the hands of the appellant mainly because the source thereof is explained. Therefore, on the basis of above factual as well as legal position the addition made by the A.O. amounting to Rs.12,00,000/- on account of advances given to Mr. Deepak Bakre is purely made on the basis of surmises and hence the same is hereby deleted."

The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue

49.2 After going through the rival submissions and material on record, we find that the advance given was disclosed in the balance sheet of assessee at assets side as advance was given and at the same time, it is not in dispute that the said Mr. Deepak Bakre has shown the same in his balance sheet. The said Deepak Bakre has valid PAN and assessed to the income tax. Moreover, the

assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 15,00,000/- during the year under consideration. In view of above, the Assessing Officer was not justified in making the addition of ₹ 12,00,000/- on account of advance given to Deepak Bakre. The same was rightly deleted by the CIT(A). We uphold the same.

50. The next issue is with regard to the disallowance of 50% of agricultural income of ₹ 44,825/- for the main reason that the assessee has not furnished the supporting evidences like sale pattis, market certificates, bills for fertilizers, etc. to substantiate the correctness of the agricultural income.

50.1 We find that a similar issue arose in the assessee's own case in A.Y. 2008-09, in which we have decided the issue in favour of assessee vide para 43 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A), who has deleted the addition made as part disallowance agricultural income of 44,825/-. We uphold the same.

51. The next issue is with regard to the disallowance of advances given of ₹ 3,50,000/- to Dineshkumar B. Lodha (HUF).

51.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee by observing as under:

“8.4 I have carefully considered the facts of the case, the assessment order, the report of the A.O. and the rival submissions. It is matter of fact that the advances given are disclosed in the balance sheet of the appellant at asset side as advance given and at the same time it is also not disputed fact that Dineshkumar B Lodha (HUF) has also shown in his

Balance Sheet the impugned transaction of receipt of advance from the appellant. The contention of the A.O. that the appellant has introduced his unaccounted and unexplained cash for impugned advance is not correct because the said transaction is disclosed by the appellant in his Balance Sheet. The A.O. has assumed that advances given or received back and disclosed in the Balance Sheet as unaccounted or unexplained money. This assumption of the A.O. is without base and illogical because the said advances are duly disclosed by the appellant in the Balance Sheets, therefore, the same cannot be unaccounted or unexplained. In such a situation, only option left with the A.O. is to verify the sources of the said investments or assets. In the present case, the sources thereof are not in dispute. The contention of the appellant, that when the said advance is separately shown at the asset side of the Balance Sheet, then the same would not appear as withdrawal from the capital is also correct and, therefore, the A.O. is not justified to look for the same in the capital or other account when the impugned advance is disclosed by the appellant as receivable in his Balance Sheet. The moot point here is that the impugned advances, whether fictitious or otherwise, are disclosed by the appellant in his financial statement at asset side and when the sources thereof are explained, there is no provision under the law to tax such transactions. It is also a matter of fact that the appellant is having enough sources of fund to justify the said advance and has offered additional income in the return of income during the year of Rs. 15,00,000/-, therefore, the A.O. is not justified to ask for the agreement, etc particularly when there is no dispute as regards the source of investment. The views of the AO that the appellant is in practice of debiting or crediting by way of advances, is based on surmises and without understanding of the accounting principles. The actual nature of transaction may be different or the same may be temporary loans, etc. but that would not make the said transaction as taxable in the hands of the appellant mainly because the source thereof is explained. Therefore, on the basis of above factual as well as legal position, the impugned addition of Rs.3,50,000/- made by the A.O. on account of advances given to Dineshkumar B Lodha (HUF) is baseless and hence the same is deleted. This ground of appeal is allowed.”

The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

51.2 After going through the rival submissions and material on record, we find that the advance in question has been disclosed by assessee in the balance sheet at assets side as advance given and at the same time, it is not in dispute that the said Dineshkumar B. Lodha (HUF) has also shown the same in his balance sheet. The stand of the assessee has been that when the said advance was separately shown at assets side of balance sheet, then, same would not appear as withdrawal from capital. Moreover, the assessee was having enough sources of funds to justify the said advance as he has offered an additional income of ₹ 15,00,000/- in the year under consideration as mentioned above. In view of the above, the Assessing Officer was not justified in making the addition of ₹ 3,50,000/- on account of advance given to Dineshkumar B. Lodha (HUF). The same was rightly deleted by CIT(A). We uphold the same.

52. The next issue is with regard to addition of ₹ 91 lacs on the basis of difference in the disclosure made u/s.132(4) and the additional income offered in the return of income filed u/s.153A.

52.1 In appeal, the CIT(A) granted the relief to the assessee by observing as under:

“9.4 I have carefully considered the facts of the case, the assessment order, the report of the A.O. and the rival submissions. It is a verified fact that the appellant and family members have disclosed the additional income of Rs. 169.32 lacs in their return of income for the year A.Y. 2008-09 and A.Y. 2009-10 as against disclosure u/s. 132(4) at Rs. 147 lacs and all are assessed to tax with the same AO. The impugned addition is made by the A.O. for the main reason as mentioned by him in report that the details of additional income offered were not provided to him by the appellant group. From the details filed by the appellant it is seen that the appellant family has already offered more income than the amount disclosed u/s. 132(4) of the Act during the year under appeal as well as during the immediately preceding year. Further, from the said piece of paper, it is not discernible the exact nature of income or investment and admittedly the A.O. has

not carried out any inquiries regarding the nature of disclosure of the impugned amount of Rs. 147 lacs obtained during the course of search action, hence, though the amount disclosed u/s. 132(4) for the year under appeal was Rs. 106 lacs, the additional amount offered for taxation in the return of income of the preceding year, shall be available as source for the payment shown to be made during the year under appeal on the said page seized during the search action, on the basis of which the disclosure was obtained by the Dept. Therefore as the additional income offered in the return of income is more than the income disclosed u/s. 132(4) of Rs. 147 lacs, further addition of Rs. 91,00,000/- is not justified and the same is hereby deleted. This ground of appeal is allowed.”

The same has been opposed before us on the behalf of revenue. On the other hand, the learned Authorized Representative supported the order of CIT(A). On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

52.2 After going through the rival submissions and material on record, we find that the assessee and his family members have disclosed the additional income of ₹ 169.32 lacs in their return of income for A.Y. 2008-09 and 2009-10 as against the disclosure u/s. 132(4) at ₹ 147 lacs and all assessed to the tax with the same Assessing Officer. The impugned addition is made by the Assessing Officer for the main reason as mentioned by him in the report that the details of additional income offered were not provided to him by the assessee group. From the details filed by assessee, it is clear that the assessee family has already offered more income than the amount disclosed u/s.132(4) of Act during the year under appeal as well as during immediately preceding year. Further, from the said piece of paper, it is not discernible the exact nature of income or investment and admittedly the Assessing Officer has not carried out any inquiries regarding the nature of disclosure of impugned amount of ₹ 147 lacs obtained during the course of search action. Though the amount disclosed u/s.132(4) for the year under appeal was ₹ 106 lacs, the additional income has offered for taxation in the

return of income of preceding year should be available as source for payment shown to be made during the year under appeal on said page seized during the search action on the basis of which, the disclosure was obtained by the department. Therefore, as additional income offered in the return of income is more than income disclosed u/s.132(4) of ₹ 147 lacs, further addition of ₹ 91 lacs was not justified, rightly observed by CIT(A) and the same was rightly deleted by him. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

53. The next issue is with regard to addition of 1,18,69,341/- on account of expenditure incurred on marriage of daughter of the assessee i.e. Miss Sayali. Miss Sayali's marriage took place on 21.12.2008 at Igatpuri, whereas the marriage of the assessee's niece (daughter of the brother Shri Vijaykumar B. Lodha) Miss Sheshadri took place on 05.03.2003 at Malegaon. During the course of search, certain documents found from the residential premises of the assessee as well as his brother Mr. Vijaykumar B Lodha. The details of such documents found during the course of search action and considered by the Assessing Officer by way of impugned addition are as under:

S. No.	Annexure No.	Page No.	Amount
1	A-3/20 (Party No. K-1)	4 to 15	1.22.201/-
2	A-1 (Party No. K-2)	7 to 10	30,76,006/-
3	A-1 (Party No. K-2)	57	24,10,556/-
4	A-1 (Party No. K-2)	58	24,50,000/-
5	A-3 (Party No. K-2)	2	32,90,000/-
6	A- 3 (Party No. K-2)	4	2,60,000/-
7	A-3 (Party No. K-2)	5&6	2,49,490/-
7	A-2 (Party No. K-2)	4	1-1.088/-
		TOTAL (Rs.)	1,18,69,341/-

53.1 The stand of the assessee has been that all the notings in above referred pages are not expenses and the Assessing Officer has erred in making the impugned addition because some of the noting

out of the above referred pages are not related to the marriage of Sayali and not incurred during the year under appeal. It was, further, submitted on behalf of assessee that the expenses actually incurred are already disclosed in the financial statements of the family members and some of the pages contains noting of rough estimate and not actual expenses as appeared from the face of it, but the Assessing Officer made addition.

53.2 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee, on which the CIT(A) having called the remand report and comments from the assessee thereon, has granted relief to the assessee by observing as under:

“ 10.4 I have carefully considered the facts of the case, the assessment order, the report of the A.O. and the rival submissions. I have also examined the relevant seized documents. The observation of the Id. A.O. that the appellant has debited the impugned expenditure to the capital accounts of the family members as per convenience and without substantiating the count with any documentary evidence is without any base and purely hypothetical, because when the source is not in dispute, the AO is not empowered to step into shoes of the taxpayer and decide the application, thereof, because the amount credited \to the capital account or otherwise is not in dispute. The fact is also not in dispute that the appellant family is having all main businesses i.e. source of income, in joint capacity i.e. firm or company. Therefore, contribution of marriage expenses by different family members is not uncommon in such cases. The AO has simply disbelieved the plausible contention of the appellant on the surmises and without any base. His another contention that the appellant has avoided furnishing the requisite details so as not to enable the AO to cross examine the fact with the concerned persons, is also not correct because all the financial statements of all the family members containing the requisite details of the impugned expenditure were well with the AO as he himself has passed the assessment orders in all the cases. Further, the AO himself has granted reduction of certain amount from the initial proposed addition of Rs. 1,46,44,533/- on this issue, on the basis of explanation of the Id AR of the appellant given in writing vide submission dated 01/11/2011. On perusal of the said submission, it is transpired that the

appellant has given complete submission in respect of all the seized documents as referred by the A.O. in the assessment order. Therefore, the contention of the AO that the appellant has avoided for giving the submission on the impugned issue is absolutely false and misleading. The item-wise discussion in respect of the impugned addition of Rs. 1,18,69,341/- is as under-Addition of Rs. 1,22,201/- Annexure A-3/20 Page No. 4 to 15

The said pages are in respect of personal expenditure related to the brother of the appellant Mr. Vijaykumar Lodha and Vijaykumar Lodha HUF, which is disclosed by them in their financial statements. In support of the same the appellant has filed the capital account as well as account extract of gold of the said parties as appearing in their financial statements. The personal expenditure amounting to Rs. 1,31,828/- incurred by Mr. Vijaykumar B Lodha and his family are accounted as drawings in the capital account of Mr. Vijaykumar B Lodha and Rs.96,490/- is related to investment made in gold pertaining to Vijaykumar B Lodha HUF accounted in the statement of affairs of Vijaykumar B Lodha HUF. The said expenditure/investment is well accounted in the balance sheet of Mr. Vijaykumar B Lodha and his HUF and the said bundle also found from the residential premises of Mr. Vijaykumar B Lodha and also admitted as belonging to him. The noting of the impugned addition are out of the aid amount already disclosed in the respective financial statements of Mr. Vijaykumar B Lodha and his HUF. The said financial statements have not been rejected or rebutted by the A.O. either in the assessment order or in the report. Therefore considering the above factual aspect the addition out of the noting on page Nos. 4 to 15 of Annexure A-3 amounting to Rs. 1,22,201/- is hereby deleted.

Addition of Rs. 30,76,006/-, Annexure A-1. Page No. 7 to 10

These pages contains noting of purchase of jewelry amounting to Rs. 30,76,006/-. Out of the same Rs. 20,00,000/- are debited to capital account of Mr. Vijaykumar Lodha for the year under review and Rs. 7,05,269/- are debited to capital account of Dineshkumar Lodha HUF for the year under review. The balance Rs. 3,70,73 7/- are claimed to be adjusted against gold exchange of Bhagchandji Lodha Ind & HUF. The said expenses are duly disclosed in the financial statements of Mr. Vijaykumar Lodha, Dineshkumar LODha HUF. The said financial statements have not been rejected or rebutted by the A.O. either in the assessment order or in the report. Further, it is also a matter of fact that the total gold ornaments after

belong to Shri Bhagchand Lodha Ind & HUF as found during the search action is not exceeding the same as per financial statements, even after considering the above referred gold given for exchange. Therefore considering the above factual aspect the addition out of the noting on page Nos. 7 to 10 of Annexure A-1 amounting to Rs. 30,76,006/- is not justified and hence the same is hereby deleted.

Additions of : Rs. 24,10,556/-, Annexure A-1. Page No. 57 and Additions of : Rs. 24,50,000/-, Annexure A-1. Page No. 58.

The Page Nos.57 and 58 of Annexure A-1 which are similar and contains the rough estimates. The close verification of the same, reveals that the said pages are related to the marriage of Shaishvee i.e. daughter of Shri Vijaykumar Lodha and the same are neither related to the marriage of daughter of the appellant nor the same are related to the year under review. This fact can be well proved on the face of the said documents because some of the amounts i.e. Rs.17,035/- and Rs.1,50,000/- as noted on said page are linked to page No. 64 of same seized annexure, which the AO himself accepted that the said page was related to marriage of Shaishvee i.e. daughter of Mr. Vijaykumar B Lodha, which held in the month of March ,2003. Further this contention of the appellant is also not rebutted by the A.O. by bringing on record anything to the contrary. Therefore considering these facts it is held that the said pages contains mainly estimates in respect of the marriage of Shaishvee i.e. daughter of Mr. Vijaykumar B. Lodha, held in the month of March, 2003, hence the impugned additions out of the notings on page Nos. 57 and 58 of Annexure A-1 amounting to Rs. 24,10,556/- and Rs.24,50,000/- respectively are hereby deleted.

As regards page No.58, which is similar to the page No.57 of Annexure A-1 as explained above Addition of Rs. 32,90,000/-, Annexure A-3, Page No. 2.

The said page contains rough estimates of marriage expenses. However, the actual expenses incurred have been shown by the appellant and his family members in their financial statements. This contention of the appellant is neither rebutted by the AO with any corroborative evidence nor found false by the AO. No evidence is found during the search action or brought on record by the A.O. during the course of assessment proceedings, to prove that the impugned expenses are actually incurred by the appellant and not disclosed by the appellant. Therefore, the impugned addition of Rs.32,90,000/- made out of page No.2 of Annexure A-3, is hereby deleted.

In view of the above, the addition of ₹ 1,18,69,341/- was reduced to ₹ 5,20,578/- [₹ 1,18,69,341/- - (₹ 2,60,000/- + ₹ 2,49,490/- + ₹ 11,088/-)] and the assessee got relief of ₹ 1,13,48,763/- (₹ 1,18,89,341/- - ₹ 5,20,518/-). It is pertinent here to mention that this ground has been raised in the contention that the Assessing Officer has made another addition of ₹ 1,22,201/- which has already been considered by the Assessing Officer in the amount of ₹ 1,18,69,341/-. It was brought to the notice of CIT(A) that the addition of ₹ 1,12,201/- was a double addition. This contention was found correct by CIT(A) because an identical addition of ₹ 1,12,201/- was included in ₹ 1,18,69,341/- which was rightly deleted by him in the beginning of para 10.4 above. So, another addition was not justified and the same was deleted by CIT(A). The same has been opposed before us on behalf of revenue. On the other hand, the learned Authorized Representative supported the order of CIT(A) on the issue.

53.3 After going through the rival submissions and material on record, we find that the stand of the Assessing Officer in this regard has been that the assessee has debited the impugned expenditure to the capital accounts of the family members as per convenience and without substantiating the count with any documentary evidence. The Assessing Officer was not justified in observing so because when the source is not in dispute, the Assessing Officer is not empowered to step into shoes of the taxpayer and decide the application thereof, because the amount credited to the capital account or otherwise is not in dispute. The fact is also not in dispute that the assessee family is having all main businesses i.e. source of income, in joint capacity i.e. firm or company. Therefore, contribution of marriage expenses by different family members is not uncommon in such situation. The Assessing Officer has simply disbelieved the plausible contention of the assessee on the surmises and without any basis. The other

contention that the assessee has avoided furnishing the requisite details so as not to enable the Assessing Officer to cross examine the fact with the concerned persons was also not found correct because all the financial statements of all the family members containing the requisite details of the impugned expenditure were well with the Assessing Officer as he himself has passed the assessment orders in all the cases. Further, the Assessing Officer himself has granted reduction of certain amount from the initial proposed addition of ₹ 1,46,44,533/- on this issue, on the basis of explanation on behalf of assessee given in writing vide submission dated 01.11.2011. On perusal of the said submission, it was transpired that the assessee has given complete submission in respect of all the seized documents as referred by the Assessing Officer in the assessment order. Therefore, the Assessing Officer was not justified to state the assessee has avoided for giving submission on the impugned issue. The item-wise discussion in respect of the impugned addition of ₹ 1,18,69,341/- is as under:

A) Addition of ₹ 1,22,201/- Annexure A-3/20 Page No.4 to 15.

The said pages were in respect of personal expenditure related to the brother of the assessee Mr. Vijaykumar Lodha and Vijaykumar Lodha HUF, which is disclosed by them in their financial statements. In support of the same the assessee has filed the capital account as well as account extract of gold of the said parties as appearing in their financial statements. The personal expenditure amounting to ₹ 1,31,828/- incurred by Mr. Vijaykumar B Lodha and his family are accounted as drawings in the capital account of Mr. Vijaykumar B Lodha and ₹ 96,490/- is related to investment made in gold pertaining to Vijaykumar B Lodha HUF accounted in the statement of affairs of Vijaykumar B Lodha HUF. The said expenditure/investment is well accounted in the balance sheet of Mr. Vijaykumar B Lodha and his HUF. The said bundle

also found from the residential premises of Mr. Vijaykumar B Lodha and also admitted as belonging to him. The noting of the impugned addition are out of the said amount already disclosed in the respective financial statements of Mr. Vijaykumar B Lodha and his HUF. The said financial statements have not been rejected or rebutted by the Assessing Officer either in the assessment order or in the report. Therefore, in view of this, addition out of noting on page Nos. 4 to 15 of Annexure A-3 amounting to ₹ 1,22,201/- has rightly been deleted by CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

B) Addition of ₹ 30,76,006/-, Annexure A-1. Page No. 7 to 10:

These pages contains noting of purchase of jewelry amounting to ₹ 30,76,006/-. Out of the same Rs. 20,00,000/- are debited to capital account of Mr. Vijaykumar Lodha for the year under review and ₹ 7,05,269/- are debited to capital account of Dineshkumar Lodha HUF for the year under review. The balance ₹ 3,70,737/- are claimed to be adjusted against gold exchange of Bhagchandji Lodha Ind & HUF. The said expenses are duly disclosed in the financial statements of Mr. Vijaykumar Lodha, Dineshkumar Lodha HUF. The said financial statements have not been rejected or rebutted by the Assessing Officer either in the assessment order or in the report. Further, it is a matter of fact that the total gold ornaments belong to Shri Bhagchand Lodha Individual & HUF as found during the search action, is not exceeding the same as per financial statements, even after considering the above referred gold given for exchange. Therefore considering the above factual aspect the addition out of the noting on page Nos. 7 to 10 of Annexure A-1 amounting to ₹ 30,76,006/- was rightly deleted by the CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

C) Additions of ₹ 24,10,556/-, Annexure A-1 Page No.57 and

D) Additions of ₹ 24,50,000/- Annexure A-1. Page No. 58.

The Page Nos.57 and 58 of Annexure A-1 which are similar and contains the rough estimates. On close verification of the same, it was found that the said pages are related to the marriage of Shaishvee i.e. daughter of Shri Vijaykumar Lodha and the same are neither related to the marriage of daughter of the assessee nor the same were related to the year under review. This fact is well proved on the face of the said documents because some of the amounts i.e. ₹ 17,035/- and ₹ 1,50,000/- as noted on said page were linked to page No. 64 of same seized annexure, which the Assessing Officer himself accepted that the said page was related to marriage of Shaishvee i.e. daughter of Mr. Vijaykumar B Lodha, which held in the month of March ,2003. This contention of the assessee was not rebutted by the Assessing Officer. Therefore, considering these facts, the CIT(A) held that the said pages contains mainly estimates in respect of the marriage of Shaishvee i.e. daughter of Mr. Vijaykumar B. Lodha, held in the month of March, 2003, hence the impugned additions out of the notings on page Nos.57 and 58 of Annexure A-1 amounting to ₹ 24,10,556/- and ₹ 24,50,000/- respectively were rightly been deleted by CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

E) Addition of ₹ 32,90,000/-, Annexure A-3, Page No. 2.

The said page contains rough estimates of marriage expenses. The actual expenses incurred have been shown by the assessee and his family members in their financial statements. This contention of the assessee was neither rebutted by the Assessing Officer with any corroborative evidence nor found false by the Assessing Officer. No evidence was found during the assessment proceedings to establish that the impugned expenses are actually incurred by the assessee

and not disclosed by the assessee. Therefore, the impugned addition of ₹ 32,90,000/- made on account of noting on page No.2 of Annexure A-3 was rightly deleted by CIT(A). This reasoned finding of CIT(A) needs no interference from our side. We uphold the same.

In view of the above, the addition of ₹ 1,18,69,341/- was reduced to ₹ 5,20,578/- [₹ 1,18,69,341/- - (₹ 2,60,000/- + ₹ 2,49,490/- + ₹ 11,088/-)] and the assessee got relief of ₹ 1,13,48,763/-. This reasoned finding of CIT(A) needs no interference from our side. We uphold the same. It is pertinent here to mention that this ground has raised in the contention that the Assessing Officer has made another addition of ₹ 1,22,201/- which has already been considered by the Assessing Officer in the amount of ₹ 1,18,69,341/-. It was brought to the notice of CIT(A) that the addition of ₹ 1,12,201/- was a double addition. This contention was found correct by CIT(A) because an identical addition of ₹ 1,12,201/- was included in ₹ 1,18,69,341/- which was rightly deleted by him in the beginning of para 10.4. So, other addition was not justified and the same was rightly deleted by CIT(A). With uphold the same. This takes care of ground No.6 & 7. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

54. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

55. In ITA No.1960/PN/2012 for A.Y. 2010-11, the revenue has filed the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agricultural income at Rs.50,690/- even though the assessee has not produced any cogent evidence in respect of his claim of the agricultural income.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of payment of cash advance for property at Rs.2,50,000/-
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the declaration of additional income of Rs.17,66,670/- was made under section 132(4) of the Act and was based on incriminating evidence found during the course of search and seizure operation.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on record.
5. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per circumstances of the case.
6. The appellant prays leave to adduce such further evidence to substantiate its case as occasion may demand.

56. The first issue is with regard to disallowance of part of the agricultural income shown in the return of income and making addition thereof of ₹ 50,690/-. A similar issue arose in the assessee's own case in A.Y. 2007-08, in which we have decided the issue in favour of assessee and followed in A.Y. 2008-09 vide paras 2.8 and 3.6 respectively of this order. Facts being similar, so following the same reasoning arose in assessee's own case for A.Y. 2008-09 in ITA No.1542/PN/2012, wherein we have uphold the deletion made by CIT(A). Facts being similar, so following the same reasoning we are not inclined to interfere with the finding of CIT(A), who has rightly deleted the addition of ₹ 50,690/- on account of disallowance of part of agricultural income because the land holding and agricultural activity thereon is not in dispute.

57. The next issue is with regard to addition on account of payment of cash advance for property of ₹ 2,50,000/-. The matter

was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having called for remand report from Assessing Officer and comments from Authorized Representative on behalf of assessee, the CIT(A) has granted the relief to the assessee vide para 6.3 of its order. The same has been opposed before us on behalf of revenue.

57.1 After going through the rival submissions and material on record, we find that the impugned advance as well as refund of the same is shown in the balance sheet of assessee in respective years. The impugned addition is made by Assessing Officer without observing basic principles of accounting because the source of giving the advance is not in dispute, even if the impugned advance was not given, then, there would have been no change in cash position of assessee. The amount has already claimed to be received back by the assessee, which has not rebutted by the Assessing Officer in any manner. In the facts and circumstances, the addition made by Assessing Officer of ₹ 2,50,000/- on account of refund of advance was not justified and the same was rightly deleted by CIT(A). We uphold the same.

58. The next issue is with regard to addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s.132(4) during the search action, which was deleted by CIT(A) vide para 8.3 of its order.

58.1 The same has been opposed before us on behalf of revenue, inter alia, submitted that the order of CIT(A) be set aside and that of Assessing Officer be restored. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

58.2 After going through the rival submissions and material on record, we find that the disclosure was given on behalf of

assessee without referring to any seized documents or investment or expenditure in particular. The said disclosure was given on behalf of assessee to cover expenditure, investments, error and omissions. The assessment of all the parties to the impugned disclosure was completed by same Assessing Officer after considering the seized record as well as investment and expenditure. In view of above, the Assessing Officer should not have made any adhoc addition for same reason. The evidentiary value of the disclosure would have weight only if same is made with reference to any seized document or valuable or expenditure, etc. The provisions of section 132(4) is clear that the statements u/s.132(4) should be confined to any books of accounts, documents, money, bullion, jewellery or other valuable article or things found to be in possession of deponent and then only statements could be used as evidence. As discussed earlier also, the Central Board of Directorate Taxes vide circular No.F.No.286/2/2003-IT(Inv.) dated 10.03.2003 has also specifically directed the field officers not to insist for disclosure or confession during the course of search action if there is no credible evidence. In the present case, there is no evidence to support such disclosure. Accordingly, the addition of ₹ 17,66,670/- made by Assessing Officer was purely on the basis of statements and not supported by any substantive evidence, same was rightly deleted by CIT(A). We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

59. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

The ITA Nos.1816, 1817, 1818 & 1819/PN/2012 for A.Y. 2010-11 pertain to Smt. Suman Anilkumar Lodha, Smt. Saroj Vijaykumar Lodha, Smt. Sujata Dineshkumar Lodha and Shri Bhagchand Motilal Lodha.

60. In ITA No.1816/PN/2012 for A.Y. 2010-11 in case of Smt. Suman Anilkumar Lodha, the revenue has filed the appeal on the following grounds:

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of undisclosed income even though the assessee admitted the undisclosed income of Rs. 17,66,670/- but failed to disclose the same in the return of income.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the declaration of additional income of Rs. 17,66,670/- was made under section 132(4) of the Act and was based on incriminating evidence found during the course of search and seizure operations.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on records.
4. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
5. The appellant prays leave to adduce such further evidence to substantiate its case as occasion may demand.

61. The assessee is an individual and is a partner in M/s. M.B. Chemicals and she is also having insurance commission and income from other sources. The assessee filed a return of income declaring total income of 3,59,900/- on 01.04.2011. A search action u/s.132(1) of I.T Act, 1961 was conducted on 21.05.2009. The issue relates to the addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s. 132(4) during the search action. The brief facts of the issue are that a statement of Mr. Dineshkumar Lodha was recorded u/s.132(4) on 10.07.2009. In the said statement in answer to Q.No.20, an amount of ₹ 1.04 crore was offered as additional income of three brothers and their respective wives i.e. Mr. Vijaykumar Lodha, Mr.

Dineshkumar Lodha, Mr. Dineshkumar Lodha, Mrs. Saroj V. Lodha, Mrs. Sujata D. Lodha and Mrs. Suman A. Lodha. No breakup of the disclosure or specific reference to any seized material or investment or expenditure was made in respect of the said disclosure. The Assessing Officer made addition of 1/6th of the said disclosure of ₹ 1.04 crore in the hands of assessee for the reason that the assessee or the persons on whose behalf the said disclosure was given, have not disclosed the same in their returns of income. The Assessing Officer scrutinized the return of income and made addition of ₹ 17,66,670/- on account of disclosure made during the search action. etc. In appeal, the said addition was deleted by the CIT(A) vide 6.3 of its order. The same has been opposed before us on behalf of revenue. In this regard, we find that a similar issue arose in ITA No.1820/PN/2012, wherein, we have upheld the relief granted by CIT(A) on a similar addition vide para 57.2 of this order and followed in other cases in this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A). We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

62. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

63. In ITA No.1817/PN/2012 for A.Y. 2010-11 in the case of Smt. Sajor Vijaykumar Lodha, the revenue has filed the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of undisclosed income even though the assessee admitted the undisclosed income of Rs. 17,66,670/- but failed to disclose the same in the return of income.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the

declaration of additional income of Rs. 17,66,670/- was made under section 132(4) of the Act and was based on incriminating evidence found during the course of search and seizure operations.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on records.
4. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
5. The appellant prays leave to adduce such further evidence to substantiate its case as occasion may demand

64. The issue relates to the addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s. 132(4) during the search action. A similar issue arose in ITA No.1816/PN/2012, wherein we have upheld the order of CIT(A) vide para 57.2 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A). We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

65. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

66. In ITA No.1818/PN/2012 for A.Y. 2010-11 in case of Smt. Sujata Dinesh Lodha, the revenue has filed the appeal on the following grounds.

1. The assessee is a partner in a firm from which he derives interest income, remuneration and income from other sources. There was an action u/s. 132(1) on 21.05.2009 at the residential premises of Shri. Dineshkumar Bhagchand Lodha, Near Bhamre Hospital, Camp Road, Malegaon. From the searched premises of Shri. Dineshkumar Bhagchand

Lodha, jewellery claimed to be belonging to the assessee was seized. Accordingly, proceedings u/s. 153C of the IT. Act were initiated. The assessee filed her return of income on 31.03.2011, declaring total income at Rs. 2,17,790/-. The assessment was finalized on 29/12/2011, determining total income of the assessee at Rs.19,84,460/- making following additions-

a. Addition on account of additional income offered but not returned at Rs.17,66,670/-

2. While recording the statement, during the course of search and seizure action on 10.07.2009, Shri Dinesh Bhagchand Lodha, in reply to question No. 20, had confirmed that the group have availed of the benefits of the provisions of section 271(l)(c), explanation 5, r.w.s. 271AAA, of the IT. Act and declaring a sum of Rs. 1.04 Crore as additional income. Assessee's share in disclosure of income was to the tune of Rs. 17,66,670/-. As the assessee had failed to furnish the details even after the repeated request, the admitted income to the tune of Rs. 17,66,670/-, was added to the total income of the assessee. A detailed discussion has been made in para 6 of the asstt. order.

67. The issue relates to the addition of ₹ 17,66,670/- made on account of additional income offered in the statement recorded u/s. 132(4) during the search action. A similar issue arose in ITA No.1816/PN/2012, wherein we have upheld the order of CIT(A) vide para 12.1 of this order and followed in ITA No.1817/PN/2012 vide para 13.1 of this order. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A). We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

68. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

69. In ITA No.1819/PN/2012 for A.Y. 2009-10 in case of Shri Bhagchand Motilal Lodha, the revenue has file the appeal on the following grounds.

1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance of part of agriculture income at Rs. 45,000/- even though the assessee has not produced any cogent evidence in support of the claim of agricultural income.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition on account of unaccounted and unexplained cash credit of Rs. 10,00,000/-
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has failed to appreciate that the amount of cash receipt of Rs. 10,00,000/- on 26/02/2008 as evidenced by the incriminating seized material is not reflected in the balance sheet of the assessee as on 31/03/2008 and hence is an unrecorded and unexplained credit in the hands of the assessee.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has failed to appreciate that the assessee could not explain the source of refund of Rs. 10,00,000/- to M/s. Paras Buildcon on 13/06/2008 with any documentary evidence except stating that the amount of cash received on 26/2/2008 was returned back which, amount itself is unexplained credit in the hands of the assessee.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in ignoring the evidence on record in the form of incriminating materials on the basis of which the various additions were made, thus rendering the decision perverse and contrary to the evidence on records.
6. The appellant craves leave to add, alter, modify, delete amend any of the grounds, as per the circumstances of the case.
7. The appellant prays leave to adduce such further evidence to substantiate it's case as occasion may demand.

70. The first issue is with regard to disallowance of part of agricultural income of ₹ 45,000/- for the main reason that the assessee has not furnished the supporting evidences like sale pattis, market certificates bills for fertilizers, etc. to substantiate the correctness of the agricultural income. A similar issue arose in ITA No.1384/PN/2012, wherein we have upheld the order of CIT(A) vide

para 4 of this order and followed in other cases of this order. Moreover, agricultural holding and agricultural activity thereon has not been disputed by revenue officers. Facts being similar, so following the same reasoning, we are not inclined to interfere with the finding of CIT(A). We uphold the same.

71. The next issue is with regard to addition of ₹ 10,00,000/- on account of payment of advances for property and receipt thereof made by the Assessing Officer.

71.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of assessee and having considered the same, the CIT(A) has deleted the addition in question after calling for remand report from the Assessing Officer and comments thereof from assessee. The same has been opposed before us on behalf of revenue, inter alia, submitted that the order of CIT(A) be set aside and that of Assessing Officer be restored on the issue. On the other hand, the learned Authorized Representative has supported the order of CIT(A) on the issue.

71.2 After going through the rival submissions and material on record, we find that noting on page 3 of Bundle No.A-21 dated 26.02.2008 seized from the premises of Shri Nemichand Modi reveals that the payment of ₹ 10,00,000/- by Modi to the assessee and noting on back side of the page No.32 Bundle No.A-28, dated 13.06.2008 seized from the premises of Shri Nemichand Modi reveals the receipt of ₹ 10,00,000/- by Shri Modi from the assessee. In the assessment order, Assessing Officer has held that the amount of ₹ 10,00,000/- which was received by assessee from Modi on 26.02.2008 was refunded by assessee on 13.06.2008. However, the assessee's stand has been that both transactions were separate transactions because noting dated 26.02.2008 contains the amount of ₹ 10,00,000/- as refund as clearly appears from the seized page No.3 of the Bundle No.A-21. As regards the payment of ₹

10,00,000/- by assessee to Modi on 13.06.2008, it was contended on behalf of assessee that the said amount was received from Shri Hemant Modi on 29.05.2008 as advance. The confirmation of Shri Hemant Modi was also on record. However, in report, the Assessing Officer has mentioned that the amount of ₹ 10,00,000/- received by assessee from Shri Modi on 26.02.2008 is not shown as liability by assessee in the balance sheet. Therefore, the said amount was not available with the assessee while making repayment thereof on 13.06.2008. The CIT(A) has observed that the impugned addition is not sustainable because if Assessing Officer himself has accepted the receipt of advance by assessee even then, the same is not shown in the balance sheet, the same shall be available as source for making refund thereof. In the present case, the claim of assessee that the refund of advance of ₹ 10,00,000/- on 13.06.2008 to Shri Hemant Modi was made out of advance received from Hemant Modi on 29.05.2008. It is undisputed that Hemant Modi is regularly assessed to income tax, who has also confirmed the said transaction. The Assessing Officer was not justified to disbelieve the transaction with Hemant Modi, one of the partner of M/s. Shree Paras Buildcon, that the same is not appearing in capital account. He was not justified because the transaction was squared off during the year itself, then the same would never appear in the capital account. Further, the Assessing Officer has ignored the fact that this is not the case, wherein, any loan or deposit or advance is taken or credited. In the present case, the amount already given is claimed to be received back by the assessee. The Assessing Officer has not disputed the contention of assessee with any cogent evidence or reasoning or has carried out any inquiry to rebut the explanation put forward on behalf of assessee and confirmation of the party in this regard. In view of above facts and also confirmation of the related parties, the addition made by Assessing Officer of ₹ 10,00,000/- on account of refund of advance given was not justified and the same was rightly deleted by CIT(A), which

needs no interference from our side. We uphold the same. The assessee has also filed cross objection, which was not pressed, so the same is dismissed as not pressed.

72. As a result, this appeal of revenue as well as corresponding cross objection of assessee, are dismissed.

73. In the result, all the appeals filed by the revenue and corresponding cross objections filed by the assessee are dismissed as indicated above.

Pronounced in the open Court on this the 20th day of March, 2014.

Sd/-
(G.S. PANNU)
Accountant Member

Sd/-
(SHAILENDRA KUMAR YADAV)
Judicial Member

Pune, Dated: 20th March, 2014
GCVSR

Copy to:-

1. Department
2. Assessee
3. The CIT(A)-I, Nashik
4. The CIT-I, Nashik
5. The DR, "B" Bench, I.T.A.T., Pune.
6. Guard File

//True Copy//

By Order

Senior Private Secretary,
I.T.A.T., Pune