(2016) 06 RAJ CK 0051

In the Rajasthan High Court

Case No : Income Tax Appeal No. 60 of 2016

M/s Grass Field Farms & Resorts Private Limited — APPELLANT

Vs

Dy. CIT Circle-2 — RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:
Income Tax Act, 1961 — Section 271(1)(c)

Citation : (2016) 289 CurTR 312 : (2016) 388 ITR 395

Hon'ble Judges : Mr. M.N. Bhandari and Mr. J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Mr. Gunjan Pathak, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. J.K. Ranka, J.—The instant appeal at the instance of assessee under Section 260A of the Income Tax Act, 1961, is directed against the order dated 27.10.2015 passed by Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. It relates to the assessment year 2006-07.

2. Brief facts for disposal of the present appeal, are that the appellant is a private limited company, incorporated on 12.7.2005 and is, inter alia, engaged in developing Farm Houses at National Highway no.8 near Village Mehala Distt. Jaipur. It filed return declaring an income of Rs. 1,87,697/- on 29.11.2006. A survey operation was directed against the appellant on 26.2.2008 which continued upto 28.2.2008 at the business premises of the appellant and during the survey operation, certain incriminating documents were found and impounded under Section 133A(3)(ia) of the Income Tax Act, 1961. The survey resulted into undisclosed investment in purchase of agricultural lands and other properties, which was noticed and admitted by the Directors of the appellant. It was noticed on perusal of the incriminating documents found at the site office of the company located at Village Mehala Distt. Jaipur, that these included loose papers having details in respect of purchase of agricultural lands and the actual purchase consideration paid. It, inter alia, was noticed on perusal of the loose

papers that the purchase consideration was recorded at a lesser value than the actual value of the transaction. During the course of survey, statements of some of the persons, namely Nagesh Bhaskar s/o Chet Ram, and Ram Kishore Jat s/o Ram Lal Jat were recorded. Statements of Nagesh Bhaskar and Ram Kishore Jat were provided to Sunil Bansal, Director, and thereafter statements of Sunil Bansal, one of the Directors of the appellant, were recorded and the statements of Sunil Bansal were confirmed by Atma Ram Gupta and Vimal Singhvi the other two Directors, wherein surrender was sought to be made of undisclosed investment and offering income. A show cause notice was issued during the course of regular assessment proceedings on 12.3.2008, bringing it to the notice of the assessee about the statements recorded of various persons including Sunil Bansal and confirmation by the other Directors. It is only thereafter that on 27.3.2008 the assessee sought to file a revised return declaring an additional income offered during the course of survey at Rs. 3,02,33,672/-. Since the incriminating documents also related to the assessment years 2007-08 and 2008-09 as well, therefore, the assessee offered and furnished revised returns offering therein substantial amounts making total surrender to the tune of Rs. 15 crore, including the assessment year under appeal.

3. Taking into consideration the revised return filed by the assessee, the Assessing Officer added the said amount of Rs. 3,02,33,672/-, and thus computed the total income at Rs. 3,04,21,370/-.

4. An appeal came to be filed by the assessee objecting to the addition being made as unexplained investment under Section 69B of the Act and not as ''business income'' as claimed by the appellant. The CIT(A), while disposing of the appeal did not interfere in the addition, but only observed that the dispute is not about the quantum but only on account of head of income and since the only activity of the assessee company is trading in real estate, the income offered by the appellant may be ''business income'' and accordingly directed to tax the income under the head ''business income'' as against income under Section 69B of the Act. The said appellate order became final and was not challenged by the appellant or by the Revenue. Since the addition was made in the assessment order, notice under Section 271(1)(c) of the Act was also issued along with the assessment order, and a show cause notice was issued as to why the penalty proceedings under Section 271(1)(c) of the Act may not be initiated for concealment and furnishing inacurate particulars in respect of the surrendered income.

5. After the appellate order having become final, the AO again issued a show cause notice under Section 271(1)(c) of the Act as to why penalty may not be imposed. An explanation was offered by the assessee as under :-

"In the above case, it is submitted that:

(i) Considering the income offered of Rs. 3023672.00 as unexplained investment u/s 69B by then learned ITO have been rejected by the Hon''ble CIT(A) Jaipur in his order dated 16.10.2008.

(ii) Then learned Assessing Officer''s observation that the revised return filed by the assessee was not voluntary but as a result of survey operation, has also been rejected by the Hon''ble CIT(A) Jaipur.

After order of the learned CIT(A), Jaipur thee is no concealed income and no penalty can be imposed. You are therefore requested to kindly drop the penalty proceedings."

However, the AO vide order dated 26.3.2010, being not satisfied with the explanation offered, imposed a penalty of Rs. 1,01,76,653/- under Section 271(1)(c) of the Act. The AO held that the surrender was not voluntary and it was only after the survey operation and after incriminating documents having been noticed and found and statements having been recorded, the assessee per force had to surrender and to file revised return.

6. The said penalty order was assailed before the CIT(A), who also upheld the imposition of penalty taking into consideration not only the various submissions of the appellant, but also taking into consideration the statements, the material and judgments.

7. The assessee further assailed the said order of CIT(A) before the Tribunal. The matter was heard by the Bench of the Tribunal, however, while the learned Accountant Member (Shri B.R. Jain) in his order taking into consideration the peculiar situation, observed that there was no documentary evidence on record to show payment of any "on money" or to suggest that there is any unexplained investment in stock entry. He chose to allow the appeal and cancelled the penalty. However, learned Judl. Member (Shri V. Durga Rao) wrote a separate judgment observing that after carefully going through the order of the learned Accountant Member, he was unable to persuade to agree with the views and conclusion drawn by the learned Accountant Member that there being no material or documentary evidence on record to show payment of any "on money", while he found that there was ample evidence on record in the shape of incriminating documents and clear working of the "on money" which was noticed by the survey team. He further noticed that the statements were recorded of two persons and also Directors who themselves calculated the concealed income and filed revised return on 27.3.2008. He also came to the conclusion that there is nothing on record that the assessee filed revised return of income due to pressure from the Department, rather in fact the Directors of the assessee company themselves have calculated the undisclosed income and thereafter filed revised return. Thus, learned Judicial Member disagreed with the findings of the learned Accountant Member and upheld the penalty. Since there was difference of opinion, the same was referred to a Third Member on the following question :-

"Whether on the peculiar facts and circumstances of this case, there is any justification in sustenance of penalty imposed under section 271(1)(c) of the Act?"

Learned Vice-President of the Tribunal (Shri G.D. Agrawal) who acting as a Third Member, heard the matter again and held as under:-

"35. However, the facts of the assessee''s case are altogether different. In the case under consideration before me, as already noted, there was survey at the assessee''s premises. During the course of survey, various incriminating documents, including the purchase deed for purchase of agricultural land, were found. The statements of the employees were recorded. On the basis of those documents and statements, it was established that the assessee was recording the purchase of the land at a much lesser value than the actual purchase price. When these facts were confronted to the Director of the Company, he admitted to have made the cash payment for purchase of agricultural land which was not recorded in the books of accounts. He, with the help of those documents, prepared a detailed chart and worked out the un-recorded investment in the land by the assessee-company in three assessment years. The revised return was filed to include those unexplained investment in the purchase of agricultural land. Therefore, it is a case where the revised return is filed by the assessee after the detection of understatement of purchase price by the survey authorities. It is not a case where the revised return was furnished by the assessee voluntarily to buy peace with the Income-tax Department. In view of above, in my opinion, the above decision of Hon''ble Apex Court would not be applicable to the facts of the assessee''s case.

(emphasis supplied)

36. After considering the arguments of both the sides and the facts of the case, I agree with the finding of the Assessing Officer in the penalty order that the assessee did not disclose the correct purchase consideration of the agricultural land. The purchase price of the land was recorded at a lesser value in the regular books of accounts. These facts were detected by the Revenue as a result of survey at the assessee''s premises. During the course of survey, the Director of the Company admitted these facts. Thus, it is a clear case where the assessee furnished incorrect particulars in the original return of income with regard to purchase price of agricultural land, value of closing stock as well as the business income. The revised return modifying the figure of purchase value of agricultural land, value of closing stock as well as business income was furnished only after the detection of these discrepancies during the course of survey. In view of above, I have no hesitation to hold that on the facts and circumstances of the case, learned Judicial Member rightly proposed to sustain the penalty imposed u/s 271(1)(c)."

(emphasis supplied)

Thus, even the learned Vice-President being Third Member of the Tribunal, discarded the finding of the learned Accountant Member that there was no incriminating document or no documentary evidence on record to show payment of any "on money". Thus, penalty was upheld.

8. Learned counsel for the appellant contended that statements of two persons were recorded, however, since they were employees of the company, they had no authority to give any statement. He also supported the findings of the learned Accountant Member that except statements recorded, there was no document/ incriminating documents found. He further contended that merely on the basis of statements recorded in survey and no document or loose papers having been found, or evidence of payment of "on money" having been found the very inclusion was not proper. He contended that the offer of revising the return was voluntary, without delay and it was assured by the authorities during the course of statements that the income being offered is subject to non initiation of penalty proceedings and once there was subjective offer/surrender, the AO was precluded from initiating the proceedings under Section 271(1)(c) of the Act. He further contended that merely making of surrender in a peculiar situation and there being no documentary evidence on record to show payment of any "on money" or to suggest any un-explained investment in stock, and even the surrender was tax neutral as there was no tax when there was no sale, and there was no occasion for the assessee to have not disclosed the said amount. He further contended that there being difference of opinion between the Members of the Tribunal, substantial questions of law arise out of the order of the Tribunal as the order of the learned Third Member as also the Judicial Member is perverse. He relied upon the following judgments :-

T. Ashok Pai v. CIT [2007] 292 ITR 11 (SC)

CIT v. Anwar Ali [1970] 76 ITR 696 (SC)

CIT v. Suresh Chandra Mittal [2011] 251 ITR 9 (SC)

CIT v. Suresh Chandra Mittal [2000] 241 ITR 124 (MP)

CIT v. Punjab Tyres [1986] 162 ITR 517 (MP)

CIT v. Suraj Bhan [2007] 294 ITR 481 (P&H)

CIT v. S. Khader Khan Son (2013) 352 ITR 480 (SC)

Paul Mathews & Sons v. CIT (2003) 181 CTR 207 (Ker.)

9. We have heard the learned counsel for the assessee and have perused the orders passed by the learned Members of the Bench including the Third Member and the other orders. We have already narrated the seriatum of facts in the beginning of the order, and we need not repeat the same. Suffice it to say that the original return was filed disclosing an income of Rs. 1,87,697/- on 29.11.2006. A survey as aforesaid, was conducted between 26.2.2008 to 28.2.2008, where statements of Nagesh Bhaskar and Ram Kishore Jat were recorded. It would be appropriate to quote the statements recorded on 26.2.2008 during the course of survey of Moolchand Jat, who had sold his land in Village Nandlalpura, Teh. Phagi, wherein he admitted that 10 months ago his family members had sold land in village Nandlalpura, Teh. Phagi. He had

admitted of having received payments as follows :-

"mRrj%& ;s nksuksa tehusa Jh jke dqekj tkV fuoklh ''k;ksflag iqjk rg0 lkaxkusj (t;flag iqjk ls 3 KM. nwj) ds ekQZr csph FkhA Hkqxrku dh jkf''k uxn ,oa pSd nksuksa gh Jh jke dqekj ds gkFkksa izkIr dh FkhA Hkqxrku bl izdkj izkIr fd;k FkkA"

fnukad

jkf''k

udn@pSd

ekQZr

31-03-2007

21]000

udn

jkedqekj

04-04-2007

1]00]000

udn

jkedqekj

05-04-2007

6]00]000

udn

jkedqekj

14-04-2007

1]00]000

udn

jkedqekj

21-04-2007

1]00]000

udn

jkedqekj

23-04-2007

18]67]500

pSd ua0 040158 In the name of Smt. Bholi Devi

jkedqekj

23-04-2007

72]300

udn

jkedqekj

23-04-2007

3]13]950

pSd ua0 040160 In the name of Sh. Suraj Karan Jat

jkedqekj

Statement of Nagesh Bhaskar is also being reproduced hereunder :-

"mRrj%& esjs HkkbZ Jh dj.k flag us 11 ch?kk 10 fcLok d`f"k Hkwfe Sale deed fnykbZ 28-07-2005 ds }kjk Grass Field Farms & Resorts (P) Ltd. dks csph Fkh ;g tehu 4]50]000@& :i;sa esa fodz; dh Fkh bldh registry 200000 :i;s fodz; izfrQy fn[kkdj djokbZ FkhA fodz; izfrQy dh iwjh jkf"k 450000@& esjs le{k Hkzkrk Jh dj.k flag us izkIr dh FkhA"

Subsequently this statement of Sh. Nagesh Bhaskar was confronted with Sh. Ramkishore, seller of land, resident of Mehala. He confirmed the statement of Sh. Nagesh Bhaskar as follows :-

"iz"u%& eSa vkidks Jh dj.k flag S/o Jh psrkjke }kjk M/s Grass Field Farms & Resorts dks fnukad 28-07-2005 dks fodz; dh xbZ d`f"k Hkwfe ls lEcfU/kr Registry fn[kk jgk gwWaA d`I;k bls ns[kdj crk;s fd bl lkSns ds ckjs esa vkidks D;k tkudkjh gSA

mRrj%& eSaus mijksDr fodz; i= ns[k fy;k gS ;g tehu eSaus vkSj Jh deys"k tSu us fcdokbZ Fkh ;g tehu 11 ch?kk 10 fcLok gSA ;g tehu Rs. 450.000 esa Grass Field Farms & Resorts dks [kjhn djokbZ FkhA eSaus Jh ukxs"k HkkLdj }kjk fn;s x;s c;ku Hkh i<+ fy;s gS vkSj eSa muls iw.kZr% lger gwWaA tehu dk lkSnk Rs. 450.000 dk gqvk Fkk rFkk Registry 200000 dh djkbZ Fkh tks fd M/s Grass Field Farms & Resorts dh lqfo/kkuqlkj djokbZ FkhA"

Relevant portion of statement of Mahesh Kumar Gupta, who was looking after the accounts of the assessee, is reproduced hereunder :-

"In question No. 11 he categorically stated as follows :

"iz"u 11%& eSa vkidks ,d power attorney tks lkxj daoj iRuh Jh guqeku flag gkMk fuoklh xzke ck<+ lhek rg0 ykylksV }kjk vkids uke ij djokbZ xbZ gS fn[kk jgk gwWa ;g POA | nks ch?kk tehu dh gS ;g tehu xkao xksfoUniqjk mQZ cklMk rg Qkxh esa gS d`i;k crk;s fd bl POA ds vuqlkj bl tehu [kjhn Qjks[r gks xbZ gS D;k\\

mRrj%& tehu dk iwjk iSlk pqdkus ds ckn gh power of attorney dh tkrh gS T;knk stamp duty ls cpus ds pDdj esa POA djokbZ xbZ gSA bl tehu dk iwjk iSlk pqdk fn;k x;k gSA ;g power of attorney esjs uke ls gS blfy, ;g ekuk tkos fd ;g tehu esjs uke ls gh [kjhnh xbZ gSA ;g :i;k dEiuh us pqdk;k gS tks esjs uke ls fn;k x;k gS dEiuh T;knkrj deZpkfj;ksa ds uke ls tehu [kjhnrh gS vkSj mldk Hkqxrku udn esa djrh gSA

iz''u 12%& eSa vkidks izsensoh iRuh Jh v[khjke tkfr tkV fuoklh xzke cqduh rg Qkxh dh power of attorney tks vkids uke ls dh xbZ gS d`i;k bls ns[kdj crk;s fd ;g tehu vkius fdrus :i;s esa [kjhnh vkSj bldk Hkqxrku dSls fd;k\\

mRrj%& ;g tehu izsensoh iRuh Jh v[khjke xzke cqduh r0 Qkxh ls power of attorney ij [kjhnh xbZ gS tehu [kjhnus ds fy, izsensoh dks iwjk Hkqxrku udn esa fd;k x;kA ;g Hkqxrku dEiuh ds Mk;jsDVj Jh lquhy caly th us fd;k gS power of attorney esjs uke ls rS;kj djokbZ gS tehu [kjhnus dk Hkqxrku ekdsZV value ij fd;k x;k gSA"

Relevant portion of statement of Ramkishore Jat, the key operator of the business of the assessee, is reproduced hereunder :-

mRrj 2 %& egsyk esa dEiuh dk tks vkWfQl gS mldh tehu 2 o"kZ iwoZ esjs ,oa Jh lquhy caly ds uke ls [kjhnh gS tks 55X37 QhV gSA bl tehu dk fuekZ.k dk;Z Jh lquhy caly (Director) gS mUgksaus djok;k gSA blds fuekZ.k esa fdrus :i;s dk fu;kstu fd;k x;k gS ftldh tkudkjh mUgha dks gSA dEiuh ds vkWfQl esa eSa cSBrk gwWa] vkSj dEiuh }kjk [kjhn ,oa fcdzh dh tkus okyh tehu ds dkxtkr tks yksdy iVokjh ls lacaf/kr gksrs gS og dk;Z esa ns[krk gwWaA esjs vykok egsyk dEiuh ds vkWfQl esa Jh xksiky ''kekZ pkSdhnkj jgrs gSA

mRrj 3 %& dEiuh ds dqN tehu esjs uke ij [kjhnh FkhA bl tehu ds [kjhnus esa tks :i;s yxs Fks og Jh lquhy caly us gh fn;k FkkA vc bl ckr dh tkudkjh Jh lquhy caly th dks gh gS fd ;g :i;k mUgksaus dEiuh ds ,dkm.Vl ls ckn esa ;g iqjh tehu mUgksaus dEiuh ds uke ij transfer djok nhA eSa dsoy dkxtksa ij gLrk{kj djrk Fkk] tehu [kjhnus esa iwjk :i;k Jh lquhy caly ,oa dEiuh dk gh yxrk FkkA

mRrj 7 %& eSa xzke QhYM QkeZl ,oa fjlksVZ izk0fy0 esa esjh tkudkjh ds vuqlkj bl dEiuh ds ikl yxHkx 1800 ch?kk tehu lM+d ds nksuksa rjg gSA blesa ls yxHkx 200 ch?kk tehu o"kZ 2008 esa [kjhnh xbZ gSA o"kZ 2007 esa tuojh ls fnlEcj rd yxHkx 500 ch?kk tehu [kjhnh gSA rFkk ''ks"k tehu blls igys dh gS o"kZ 2007 ,oa o"kZ 2008 esa [kjhnh xbZ tehu esa ls o"kZ 2007 esa [kjhnh xbZ tehu yxHkx 14 yk[k :i;s izfr ch?kk rFkk o"kZ 2008 esa yxHkx 15 yk[k :i;s izfr ch?kk dh nj ls [kjhnh xbZ FkhA bl dEiuh ds fy, fuEu nyky tehu fnykus dk dke djrs gS%&

1- Jh deys''k tSu S/o Jh dSyk''k pUn tSu] fuoklh&egsyk] ds0ds0 tujy LVksj eks0u0 9829024847

2- Jh jke lgk; pkS/kjh S/o Jh xaxkjke] fuoklh&cdwuh

3- Jh jkefd''kksj Lo;a

mRrj %& dEiuh tks tehu [kjhnrh gSA mldh DLC jsV gksrh Fkh fdUrq fons''kh dEiuh buds lkFk vkus ls orZeku esa jftLV~h dh nj yxHkx 10 yk[k :i;s izfr ch?kk gSA ''ks"k jkf''k dk Hkqxrku jksdM+ esa fd;k tkrk gSA

iz''u 9 %& eSa vkidks dqN jftLV~h;ksa dh dkWih fn[kk jgk gwWa ftl ij vkids xokg ds :i esa gLrk{kj gSA bUgs ns[kdj crk;s fd tehu dk lkSnk fdl jsV ls gqvk o jftLV~h fdl jsV ls gqbZ&

mRrj%& eSaus vki }kjk fn[kk;h jftLV~h;kWa ns[k yh gS bUgsa eSa fuEu izdkj ls Li"V djrk gwWaA

1- Jh uhjt jkBkSM fuoklh 59] ljnkj iVsy ekxZ }kjk fnukad 08-08-2005 dks csph xbZ tehu esa ckrphr esjs ek/;e ls gqbZ Fkh ftlesa Jh foey fla?koh us 70]000@& izfr ch?kk dh nj ls dher yxkbZ Fkh ijUrq lkSnk ugha cSBk Fkk D;ksafd fodzsrk ikVhZ bl jkf''k ij tehu cspus ij rS;kj ugha FkhA blds i''pkr~ bl tehu dk lkSnk yxHkx 1 yk[k :i;s izfr ch?kk ds fglkc ls nksuksa ikfVZ;ksa us r; fd;k rFkk jftLV~h djkrs le; eSa rFkk deys[k tSu nksuksa mifLFkr FksA bl tehu dh jftLV~h 4 yk[k 50 gtkj :i;s esa gqbZ tks 30000 izfr ch?kk ds fglkc ls gqbZA

2- Jh ds0,l0''kkg ,oa lh0,l0''kkg] HUF dh tehu dqy 58 ch?kk tehu csph xbZ gSA ftldh jftLV~h 08-08-2005 dks djokbZ xbZ Fkh ftldh okLrfod nj Hkh uhjt jkBkSM ds cjkcj gh gqbZ FkhA

3- Jh dj.k flag iq= Jh pS=jke ls 11 ch?kk 10 fcLok 28-07-2005 dks [kjhnh xbZ FkhA ftlesa lkSnk esjs ek/;e ls gqvk Fkk izfrQy dk Hkqxrku Hkh esjs ek/;e ls gqvk Fkk ;g lkSnk 40000@& izfr ch?kk dh nj ls gqvk FkkA rFkk jftLV~h 2 yk[k dh dqy djkbZ xbZ FkhA ijUrq dz; izfrQy dk Hkqxrku 460000@& :i;s fd;k x;k FkkA tks jksdM+ esa fd;k x;k FkkA

4- Jh Hkaoj flag S/o Jh xksiky flag ls 19-09-2005 dks [kjhnh xbZ dqy 21 ch?kk 14 fcLok gS tks fd fnukad 19-09-2005 dks dEiuh ds uke cspku dh xbZ crkbZ gSA Jh Hkaoj flag dEiuh esa Jh lquhy caly ds ;gka ij ukSdjh djrs gSA ;g tehu Jh caly us Hkaoj flag ds uke [kjhnh Fkh vkSj Hkqxrku Hkh lquhy caly us fd;k FkkA ;g tehu 26000@& :0 izfr ch?kk esa eSaus fnykbZ Fkh vkSj Hkqxrku Jh lquhy caly us fn;k FkkA bl lEcU/k esa eSa ;g crkuk pkgrk gwWa fd Jh Hkaoj flag us cSad [kkrs esa iSls Jh lquhy caly us tek djk;k Fkk vkSj bUgha iSlksa ls tehu dk Hkqxrku gqvk FkkA

iz''u 11%& eSa vkidks Annex A.1 dk ist ua0 1 fn[kk jgk gwWa tks fd vkids dk;kZy; ls izkIr gqvk gS bls ns[kdj crk;s fd ;g D;k gS\\

mRrj%& eSaus ;g isij ns[k fy;k gSA bl isij ds fMVsYl dks eSa tkurk gwWaA Jh jkds''k dqekj tSu ls Jh lquhy caly dks 15 ch?kk dqN fclok tehu] xkWao ukljkSnk esa 5 yk[k 50 gtkj :i;s izfr ch?kk dh nj ls yxHkx 6 ekg iwoZ esa fnyokbZ FkhA blesa Jh deys''k tSu Hkh nyky Fkk rFkk Jh jke fuokl pkS/kjh] fuoklh&xkMkSrk Hkh nyky FksA bl lkSns esa ge rhu nyky FksA lkSns dk Hkxrku xzkl fQYM] '';ke uxj esa fd;k x;k Fkk vkSj bldh jftLV~h Hkh djok nh xbZ gSA bl lkSns dh jftLV~h esjh tkudkjh ds vuqlkj 2 yk[k :i;s ch?kk dh nj ls gqbZ FkhA bl lkSns esa ge rhuksa nykyksa dks dqy feykdj 2 nykyh feyh FkhA iz''u 17%& eSa vkidks Annex.A.1 dk ist ua0 13 fn[kk jgk gwWaA bls ns[kdj iwjh tkudkjh crk;sA

mRrj%& eSaus mijksDr ist 13 ns[k fy;k gSA blesa Jh izHkq jSxj ls xzkl fQYM QkeZl ,.M fjlksVZ esa [kljk ua0 427@4 ls 14 ch?kk tehu 15 yk[k 30 gtkj :i;s izfr ch?kk dh nj ls yxHkx 6 ekg iwoZ fnyokbZ FkhA bl tehu dk dqy Hkqxrku 2 djksM+ 14 yk[k 20 gtkj :i;s curk gSA ftlesa ls 45]00]000@& yk[k :i;s ,xzhesUV ds isVs lkbZ okLrs pSd ls fn;s FksA bl tehu esa ls 2@3 Hkkx o ch?kk 6-5 fcLok dh jftLV~h djk yh xbZ gSA rFkk ''ks"k tehu dh jftLV~h gksuh ckdh gSA bldh jftLV~h jsV ;k mlls dqN vf/kd iM xbZ gksxhA bl dkxt ls of.kZr pSd o jksdM+ jkf''k dk Hkqxrku okLrfod gSA tks lquhy caly us fd;k FkkA ckn esa crk;k fd ;g ,xzhesUV ds isVs tks jkf''k os 45 yk[k :i;s jksdM+h fn;s x;s Fks ijUrq igys eSaus pSd ls crkbZ FkhA bl tehu dh jftLV~h Jh jktfd''kksj xksBoky ds uke djkbZ gSA tks lquhy caly dk fo''okl ik= O;fDr gSA

iz''u 21 %& eSa vkidks Annex. A-II dk ist la0 13 fn[kk jgk gwWaA bls ns[kdj crk;s fd blesa fdu lkSnks dk fMVsy fy[kk gSA

mRrj%& eSaus mijksDr dkxt ns[k fy, gSA bl dkxt esa lcls mij caly fy[kk gqvk gSA blls uhps 438 fcLok] mlds uhps 20 ch?kk fy[kk gqvk gSA bl dkxt ds nka;h vkSj nks djksM+ 11 yk[k :i;s caly ls vk;s 11-04-2005 fy[kk gqvk gS blds uhps 6]50]000 :i;s xkMkSrk esa ?kklh jke dks fn;s blds uhps 5 yk[k :i;s] 15 ch?kk ,Mokal blds uhps 2 yk[k :i;s ckWalM+k ,Mokal rFkk blds uhps 28 yk[k :i;s uan yky iwjk [kpksZ lfgr fy[kk gqvk gSA bl dkxt ds ihNs dh lkbZM esa fuEu izfof"V;kWa fy[kh gqbZ gS%&

1]25]00]000

uklukSnk lfgr

07-01-05

5]00]000

10-01-05

10]00]000

22-01-05

5]00]000

07-02-05

5]00]000

18-02-05

5]00]000

19-02-05

16]00]000

25-02-05

5]00]000

14-03-05

5]00]000

16-03-05

5]00]000

23-03-05

3]00]000

08-04-05

10]00]000

11-04-05

mijksDr lHkh Hkqxrku xzkl fQYM QkeZl ,.M fjlksVZ rFkk Jh lquhy caly ls lEcfU/kr gSA uklukSnk dh tehu rFkk vU; tehuksa dh jftLV~h;kWa fdruh jsV ij gqbZ ;g esjh tkudkjh esa ugha gSA

iz"u 25%& eSa vkidks ,d lsy MhM tks xtkuan iq= ckNwyky ,oa Jherh uhy clay / keZiRuh Jh lquhy clay ds e/; fnukad 24-08-2004 dks gqvk gS ftlds rgr 10 ch?kk iDdh tehu 1 yk[k 70 gtkj :i;s esa dz; fd;k tkuk crk;k gSA bl lsy MhM ij ,d iphZ fpidh gSA ftl iphZ esa 25500@& :i;s LVkEi M~;wVh ,oa vU; [kpksZa rFkk nwljh vkSj 396000@& :i;s dk fglkc fy[kk x;k gSA bl dkxt ij gh uhps 25500@& [kpksZa ,oa 367500@& yS.M dqy 393000@& :0 esa bls Li"V djsa\\

mRrj%& eSaus vki }kjk fn[kkbZ xbZ fodz; iphZ ns[k yh gSA ;g lSy MhM eSaus djokbZ gSA ;g tehu 367500@& :0 esa [kjhnh xbZ gS o bldh jftLV~h 1]70]000@& :i;s esa djkbZ xbZA jftLV~h de dh D;ksa djkbZ gS ;g esjh tkudkjh esa ugha gSA

Thereafter all the statements as aforesaid, as well as registered and un-registered sale-deeds and loose papers found during the course of survey, were confronted with Sunil Bansal, Director of the company, and it would also be relevant to observe his statement, which is reproduced hereunder :-

iz"u 13%& Jh jkefd"kksj tkV iq= Jh jkeyky tkV fuoklh&egsyk dks D;k vki tkurs gSA blls vkids D;k O;kikfjd laca/k gS\\

mRrj%& mijksDr iz"u ds mRrj esa tSlk eSaus crk;k Fkk fd jkefd"kksj tkV ds lkFk feydj NH-8 ds egsyk esa daiuh ds lkbZV vkWfQl ds fy, tehu [kjhnh Fkh vkSj ml ij fuekZ.k dk;Z dEiuh ds [kkrs esa ls djok;k FkkA Jh jkefd"kksj tkV dEiuh ds site office esa egsyk esa cSBrs gSA Jh jkefd"kksj tkV dh enn ls dEiuh ls o"kZ 2005&06 esa tehu [kjhnh FkhA tehu [kjhnus ds nkSjku tks jftLV~h;kWa gqbZ mu ij Hkh Jh jkefd"kksj tkV us xokg ds :i esa gLrk{kj fd;s FksA Jh jkefd"kksj tkV us daiuh dh tehu [kjhnus esa broker ds :i esa dk;Z fd;k gSA

iz''u 14%& fnukad 26-02-2008 dks tkjh losZ dh dk;Zokgh ds nkSjku Jh jkefd''kksj tkV ds c;ku ''kiFk iwoZd ntZ fd;s x;s gSA ;s c;ku eSa vkidks fn[kk jgk gwWa] mUgksaus vius c;ku ds iz''u la0 3 ds mRrj esa crk;k fd dEiuh us dqN tehu Jh jkefd''kksj tkV ds uke ij [kjhnh FkhA bl tehu dks [kjhnus esa tks :i;s yxs Fks os Jh lquhy caly us gh fn;s FksA bl ckr dh tkudkjh Hkh mlus vius c;ku esa nh gSA fd tehu dEiuh ds uke ij ckn esa fcu iSls fn;s dEiuh ds uke ij transfer dj nh xbZA bl fo"k; esa Li"Vhdj.k nsosa\\

mRrj%& dEiuh dh 56 ,dM+ tehu ([ksrh) [kjhnus dh lhfyax gS blfy, tehu nwljs yksxksa ds uke ij Hkh [kjhnrs gSA dEiuh us tehu jkefd''kksj tkV ds uke ls [kjhnh FkhA eSa jkefd''kksj tkV }kjk fn;s x;s c;ku ls lger gwWaA Jh jkefd''kksj tkV ds uke ls 33 ch?kk 11 fcLok tehu [kjhnh FkhA bl tehu ds [kjhnus esa :i;k xzkl QhYM Dyc izk0fy0 ls jksdM+h fudky dj eSaus fn;s FksA ftudk bUnzkt Dyc dh ys[pkk iqLrdksa esa ugha gSA bl jkf''k dk Dyc ds MkW;jsDVj dh gSfl;r ls eSa vk;dj ds fy, lefiZr djrk gwWaA blesa dqy fofu;ksx 7]00]675@& :i;s fd;s x;s FksA blds vykok gh jkefd''kksj tkV ds uke ls fnukad 02-08-2005 ,oa 27-07-2008 dks dze''k% 43]910 ,oa 38]840 :i;s dh tehu eSa0 xzkl QhYM QkeZl ,.M fjlksVZ izk0fy0 dEiuh ls udn esa Hkqxrku fd;k x;k FkkA ftldk ys[kk iqLrd esa dksbZ bUnzkt ugha gSA ftls vk;dj ds fy, lefiZr djrk gwWaA

iz''u 20%& eSa vkidks losZ dh dk;Zokgh ds nkSjku dEiuh ds lkbZM vkWfQl ls feys Annex. A-I dk ist dEiuh }kjk Agreement ds isVs 45]00]000@& :i;s udn fn;s x;s FksA og udn jkf''k M/s Grass Field Farms & Resorts (P) Ltd. Jaipur dh ys[kk iqfLrdk ds ckgj ls fn;k gSA ;g 45]00]000@& :i;s dh jkf''k eSa daiuh dh v?kksf"kr vk; ekurs gq,] vk;dj dks lefiZr djrk gwWaA

iz''u 21%& iz''u la0 16 ds tokc esa vkius crk;k gS fd Jh dj.k flag ls dz; dh xbZ tehu ckcr Jh ukxs''k HkkLdj ds c;ku ,oa bl lkSns ds nyky Jh jkefd''kksj tkV ds c;ku ds vk/kkj ij 2]50]000@& :i;s dk dz; izfrQy v?kksf"kr :i ls Hkqxrku fd;k x;k Fkk] ijUrq vkius tokc esa crk;k gS fd vkbZfM;k ugha gSA okil lkspdj ,oa dEiuh ds vU; funs''kdksa ls fopkj dj lgh fLFkfr dh tkudkjh nsa\\

mRrj %& eSaus Jh jke fd''kksj tkV rFkk Jh ukxs''k HkkLdj nksuksa ds c;ku i<+ fy;s gSA bl lkSns esa jkefd''kksj tkV nyky FkkA tehu dk lkSnk 45]00]000 :i;s ,oa sales consideration dj Hkqxrku iw.kZ:is.k jksdMh fd;k x;k FkkA jftLV~h dh value, stamp duty cpkus ds dkj.k DLC rate ij djk;k x;k FkkA

iz''u 22%& Jh jkefd''kksj tkV us vius c;ku esa iz''u la0 9 ds mRrj esa crk;k gS fd Jh uhjt jkBkSM] Jh ds0,l0''kkg] lh0,l0 ''kkg] Jh dj.k flag] Jh Hkaoj flag ,oa Jh pUnz izdk''k xkSre ls dz; dh xbZ tehu ds lkSns esa okLrfod dz; izfrQy rFkk Sale deed esa n''kkZ;s okLrfod izfrQy esa vUrj gSA vki c;ku i<+dj bl ckcr viuk Li"Vhdj.k nsaA

mRrj %& eSaus Jh jkefd''kksj tkV ds c;ku dk mRrj i<+ fy;k gSA eSa Hkh jkefd''kksj ds dFku ls lger gwWaA vpy lEifRr ds dz; esa sale deed ls vf/kd fodz; izfrQy dbZ ckj fn;k tkrk gS] ,oa Jh jkefd''kksj us c;ku esa tks instruction crkbZ gS] os blh izdkj dh gSA bu lkSnksa esa fuEu jkf''k sale deed esa of.kZr jkf''k ds vykok Hkqxrku dh xbZ gS%&"

dz0la0 1

Jh uhjt

15x85,000-

4,50,000

= 8,25,000

dz0la0 2

Jh ds0,l0 ''kkg Jh lh0,l0 ''kkg

58x70,000-

14,50,000

= 26,10,000

dz0la0 3

Jh dj.kflag&iwoZ esa crk;k tk pqdk gSA

-

-

-

dz0la0 4

Jh HkWaoj flag

-

-

Hkqxrku dh xbZ jkf''k ys[kk iqLrdksa ls lR;kfir djok nh tkosxhA

dza0la0 4

Jh pUnzizdk''k xkSre

ys[kk iqLrdksa ls lR;kfir djok nh tkosxhA

"bl izdkj mijksDr ds dz; djokus esa :0 34]35]000@& dk Hkqxrku jksdM+ esa fd;k x;k Fkk] tks ys[kk iqLrdksa esa ntZ ugha gS rFkk ;g dEiuh dh lacaf/kr o"kZ dh v?kksf"kr vk; ls vftZr gS ftl ij ns; vk;dj dk Hkqxrku fu/kkZj.k o"kZ 2006&07 esa ge dj nsaxsA

iz''u 23 %& Jh jkefd''kksj tkV us vius c;ku ds iz''u la0 11 ds mRrj esa crk;k gS fd Annex. A.1 ds ist ua0 1 ij Hkh jkds''k dqekj tSu ls 14 ch?kk tehu ukljkSnk esa 5]50]000@& :i;s izfr ch?kk dh nj ls fnyokbZ Hkh bl ckcr viuk Li"Vhdj.k nsa\\

mRrj %& eSaus Annex. A.1 dk i`"B la0 1 ns[k fy;k gS rFkk blls fy;s x;s rF; lgh gS ,oa eSa u{kt dkyksukbZtlZ ls Jh jkds''k tSu ds ek/;e ls 14 ch?kk 19 fcLok tehu [kljk la0 427@6 xzke&ukluksrk esa [kjhnh xbZ FkhA ;g tehu 5]50]000 :0 izfr ch?kk dh nj dz; dk xbZ FkhA jkefd''kksj tkV us tehu N% ekg iwoZ dz; djuk crk;k gS tks lgh ugha gSA tehu iwoZ esa dz; dj nh xbZ FkhA bl tehu ds isVs 82]50]000@& :i;s ds yxHkx Hkqxrku fd;k x;k Fkk ,oa jftLV~h esa 22]00]000 :i;s n''kkZ;s x;s Fks] ftudk dEiuh dh ys[kk iqLrdks esa dksbZ bUnzkt ugha gS ,oa dEiuh dh vk; ls vftZr fd;k x;k gSA ;s 60]50]000 esa fu/kkZj.k o"kZ 2006&07 esa dEiuh dh v?kksf"kr vk; ekurs gq, vk;dj dks lefiZr djrk gwWaA bl lkSns dh tkudkjh dEiuh ds rhuksa funs''kdksa dks gSA

iz''u 25 %& eSa0 xzkl QhYM QkeZl ,.M fjiksVZ] izk0fy0 ds jftLVMZ vkWfQl K-107, fd''ku uxj] '';ke uxj] t;iqj B-32 jkt Hkou jksM] flfoy ykbZUl] xkWao esgyk fLFkr lkbV vkWfQl ds ifjljksa ij losZa dh dk;Zokgh ds nkSjku cgqr lkjs nLrkost feys gSA ftuesa dEiuh ds fy, dEiuh ds funsZ''kdksa }kjk Hkwfe ds dz; lacaf/kr nLrkost feys gSA ftuesa of.kZr dz; izfrQy lacaf/kr fodz; i= esa of.kZr dz; izfrQy ls cgqr vf/kd gSA bl ckcr ik;s x;s nLrkost vkidks fn[kk;s tk jgs gS rFkk dqN ij iwoZ iz''uksa esa vkils tkudkjh ys yh gSA bl ckcr vki crk;s fd dEiuh }kjk blds vkjEHk ls yxkdj vkt rd ftruh Hkh d`f"k Hkwfe vFkok vU; vpy lEifRr dz; dh xbZ Fkh mlesa fdruk dz; izfrQy sale deed esa n''kkZ;k x;k gS vkSj okLro esa fdruk dz; izfrQy vnk fd;k x;k FkkA ;g tkudkjh vki rhuksa funsZ''kd Lo;a rFkk vius deZpkfj;ksa dh enn ls lHkh sale deed,oa vU; nLrkostksa dk vkadyu dj is''k djsa\\

mRrj %& dEiuh ds rhuksa funsZ''kdksa us vki }kjk crk;s x;s loose papers ns[k fy;s rFkk iwoZ iz''u ds mRrj esa of.kZr loose papers Hkh ns[k fy;s gS dEiuh dk izkjEHk fo0o"kZ 2005&06 esa gqvk Fkk ,oa dEiuh ds incorporation ls vkt rd dEiuh us ftruh Hkh vpy lEifRr dz; dh x;h gS mudh sale deeds geus ns[k yh gS rFkk ftudh sale deeds miyC/k ugha gS muls lEcfU/kr vk; fjdkWMZ consider djus ds ckn geus rhuksa funsZ''kdksa ls lyaXu&^,* ds vuqlkj v?kksf"kr dz; izfrQy ftldk Hkqxrku fd;k x;k gS] og summarise fd;k gS ,oa blds vykok esjs c;ku esa iwoZ iz''uksa esa fofHkUu LFkkuksa ij dEiuh ls lacaf/kr v?kksf"kr fuos''k rFkk vk; ds ckjs esa crk;k gS og Hkh lyaXu pkVZ esa lekfgr dj fy;k x;k gSA ,oa layXud -''A'' ds vuqlkj fofHkUu o"kksZa esa eSa0 xzkl QhYM QkeZl ,oa fjlksVZl izk0fy0 dh v?kksf"kr vk; fuEu izdkj ls curh gS%&"

Dza0la0

fu/kkZj.k o"kZ

fodz; i= esa n''kkZ;k izfrQy

dEiuh }kjk n''kkZ;k vfxze

visf{kr dz; izfrQy ;k vU; izdkj ls vk;

1-

2006&07

4-49-05-871

1-27-53-220

3-02-33-672

2-

2007&08

6-08-70-920

3-20-15-047

5-57-72-494

3-

2008&09

50-28-50-055

65-59-000

5-68-10-943

dqy ;ksx

61-56-26-846

5-13-27-267

14-28-17-110

mijksDr of.kZr jkf''k;ksa dh foLr`r tkudkjh layXud ^,* esa nh xbZ gSA fu/kkZj.k o"kZ 2006&07 ls 2008&09 rd layXud ds vuqlkj :i;s 14]28]17]110@& vadu pkSng djksM+ vBkbZl yk[k lRrjk gtkj ,d lkS nl :i;s dh v?kksf"kr vk; dh x.kuk eS0 xzkl QhYM QkeZl ,.M fjlksVZl izk0fy0 esa ge rhuks funs''kdksa esa lHkh miyC/k fjdkMZ dks /;ku esa j[krs gq, dh gSA pwafd x.kuk foLr`r gS blfy, izR;sd izfof"B ds laca/k esa lyaXu pkV esa summited dj fn;k x;k gSA bl pkVZ esa fy[kh xbZ izR;sd entry ls ge rhuksa funsZ''kd rFkk dEiuh la;qDr :i ls ,oa i`Fkd&i`Fkd :i ls ftEesnkj gSA pkVZ esa purchases value dk vFkZ jftLV~h ds ewY; ls gS rFkk amount already recorded in books dks Hkh ge Li"V djuk pkgrs gS fd dEiuh us stamp duty dh cpr djus ds fy, ftl O;fDr ls tehu [kjhnh xbZ mls dqN jkf''k tehu ds dz; izfrQy ds cnys jftLV~h ewY; ls T;knk dh xbZ Fkh] ftls books esa advance fn[kk fn;k x;k FkkA mls vc lekIr fd;k tk jgk gSA bl izfo"B dks consider djus ds i''pkr~ Hkh tks v?kksf"kr dz; izfrQy dk Hkqxrku fd;k x;k gS og chart ds balance column esa fn[kk;k x;k gSA pkVZ ds balance column esa fn[kkbZ xbZ jkf''k lHkh rF;ksa dks en~nsutj j[krs gq, v?kksf"kr vk; gSA ftlesa vU; dksbZ NqV ugha yh tk;sxh ,oa bl jkf''k ij ns; vk;dj dk Hkqxrku dEiuh viuh fofHkUu o"kksZa dh vk; esa fn[kkdj djsxhA vf/kdka''k jftLV~h;kWa Jh egs''k dqekj xqIrk us dEiuh ds izfrfuf/k ds rkSj ij djokbZ gSA

iz''u 26 %& d`i;k crk;s fd vkids layXud ^,* esa of.kZr v?kksf"kr jkf''k ftl izdkj crkbZ gSA bl laca/k esa foLr`r tkudkjh nsA mRrj %& ge rhuksa funsZ''kdksa us eSa0 xzkl fQYM QkeZl ,oa fjiksVZ izk0fy0 }kjk izkjEHk ls vkt rd dz; dh xbZ] lHkh tehuksa ls lacaf/kr nLrkost ns[k fy;s gSA ftudh sale deed readily miyC/k ugha gSA mudk vU; fjdkWMZ ns[k fy;k gSA dEiuh ds site office egsyk esa ik;s x;s nLrkost ns[k fy;s gSA Jh jke fd''kksj tkV ds c;ku ns[k fy;s gS ,oa c;ku esa of.kZr iwoZ iz''uksa esa nh xbZ tkudkjh Hkh ns[k yh gSA bu lHkh rF;ksa ij iw.kZ :i ls fopkj foe''kZ djus ds ckn dEiuh ds rhuksa funsZ''kdksa us layXu pkVZ cuk;k gS ,oa vius gLrk{kj fd;s gSA Jh lquhy caly c;ku gekjh mifLFkfr esa ntZ gks jgs gS ,oa ge blls lger gSA dEiuh ds fy, Jh egs''k xqIrk us ftu lkSnksa esa dEiuh ds izfrfuf/k ds crkSj gLrk{kj fd;s gS ,oa fodz; izfrQy dk Hkqxrku fd;k gSA mUgksaus us Hkh rF; lacaf/kr lR;kiu dj fn;k gSA layXud ftlesa lHkh lkSnksa dh tkudkjh mlesa of.kZr rate ds dkWye esa Hkjh xbZ jkf''k okLrfod gSA ftlls ge lHkh lger gSA

iz''u 29%& eSa vkidks vius dk;kZy; esa mifLFkr loZJh egs''k xqIrk] deys''k xqIrk] Jh eqds''k xqIrk] fel jkuw ikVuh] Jherh vuqtk flag rFkk losZ ds nkSjku bl dk;kZy; esa vkus okys Jh ewypUnz tkV ds c;ku ntZ fd;s x;s gS vki bUgs ns[k ys ,oa buls of.kZr rF;ksa esa ;fn dksbZ vlgefr rks crk;s\\

mRrj %& eSaus mijksDr lHkh O;fDr;ksa ds c;ku i<+ fy;s gS ,oa buesa of.kZr lHkh rF; lgh gS rFkk buls ge lHkh lger gSA

iz''u 30 %& eSa0 xzkl fQYM QkeZl ,.M fjlksVZ izk0fy0 ds jftLVMZ vkWfQl K-107, fd''ku uxj] '';ke uxj] dkWjiksjsV vkWfQl B-32 jkt Hkou jksM+ flfoy ykbZUl ,oa lkbZV vkWfQl egsyk t;iqj fLFkr dk;kZy;ksa ls izkIr ik;s x;s nLrkostksa ,oa ys[kkiqLrdksa] ywt isilZ ,oa dEI;wVj ls fudkys x;s nLrkost esa eSa0 xzkl fQYM QkeZl ,.M fjlksVZ izk0fy0 xzkl fcYMlZ izk0fy0 ,oa xzkl fQYM Qk;j dsfiVy MoyilZ izk0fy0 ,oa xzkl Qk;j ,LVsV izk0fy0 ls lacaf/kr gSA lHkh nLrkost fofHkUu LFkkuksa ls ,df=r dj dEiuh ds dkWjiksjsV B-32] jktHkou jksM+] flfoy ykbZUl] t;iqj esa ,df=r vkidks vU; funsZ''kdksa ,oa egs''k dqekj xqIrk] eSustj dks fn[kk fn;s x;s gSA Jh jke fd''kksj tkV xBkyk ,oa Jh deys''k xqIrk }kjk lkbZV ls yk;s x;s nLrkost Hkh fn[kk fn;s gSA buds ckjs esaa vkidks dqN dguk gS\\

mRrj %& geus lHkh nLrkost ns[k fy;s gSA lHkh O;fDr;ksa }kjk fn;s c;ku ns[k fy;s gSA ge lHkh buls iw.kZr;k lger gSA

iz''u 31 %& losZa ds nkSjku fofHkUu LFkkuksa ls izkIr incriminating MkD;wesUV ,oa ntZ ds c;kuksa ds vk/kkj ij mijksDr iz''uksa ds mRrj ds vk/kkj ij dj fu/kkZj.k 2006&07] 2007&08 ,oa 2008&09 esa dqy 15]00]00]000 vadu iUnzg djksM+ :i;s dh v?kksf"kr vk; dh x.kuk dh xbZ gS tks vk; ,oa dEiuh ds vU; funsZ''kdksa }kjk dh xbZ gSA bl ckcr vkidks D;k dguk gS\\

mRrj %& eSaus vkSj Jh vkRek jke xqIrk] foey fla?koh ,oa Jh egs''k dqekj xqIrk] eSustj us tks working djds nh gS mlds vk/kkj ij 50 o"kZ 2006&07] 2007&08 ,ao 2008&09 ds fy, 15]00]00]000 vadu iUnzg djksM+ :i;s v?kksf"kr vk; foHkkx dks dj ds fy, fookn (litigation) lekIr djus ds fy, ,oa dEiuh ds dk;Z esa lqpk: xfr rFkk ekufld ''kkfUr ,oa vfHk;kstu ls cpus ds fy, dj jgs gSA v?kksf"kr vk; dh x.kuk okLrfod rF;ksa ds vk/kkj ij dh xbZ gS tks lkFk gSA blus dksbZ rF; ugha fNik;k gS ,oa bZ''oj dks lk{kh ekudj iw.kZ gks''k gokl esa c;ku fn;s gSA"

(emphasis supplied)

10. On perusal of the statements of various persons including Sunil Bansal and confirmation by the other two Directors, who were also present during the course of statements, it was categorically accepted and agreed by the three Directors, which had also been placed on record as Annexure ''A'', stating about undisclosed investment in purchase of the various properties during the following assessment years :-

2006-07

Rs. 3,02,33,672

2007-08

Rs. 5,57,72,494

2008-09

Rs. 5,68,10,943

Total

Rs. 14,28,17,110/-

Rounded off

Rs. 15 crore

11. Thus, taking into consideration the material on record and voluminous documents found during the course of survey, in our view, the statements and offering of income during the course of survey, cannot be said to be voluntary as it was clear cut admission by not only Sunil Bansal but other two Directors as well, who were also present at the time of statements who took into consideration the categorical statements of the various person/associates of the assessee and the Directors clearly admitting about the purchase through these key person/associates. It is only when faced with the statements as also the unrecorded/recorded documents found at the business premises that the assessee came with a surrender. It is also appropriate to observe that though the statements offering surrender was made by Sunil Bansal coupled with the confirmation by the other two Directors, during survey proceedings, but despite the same, the assessee chose not to file return immediately, however, it is only when a show cause notice was again issued by the AO on 12.3.2008 bringing it to the notice of the assessee about admission of surrender to the extent of Rs. 3,02,33,672/- thereafter return was filed on 27.3.2008. In our view, the return so filed on 27.3.2008 by no stretch of imagination can be said to be a voluntary act, but after detection.

12. We would also like to refer to the observation of the learned Accountant Member (Shri B.R. Jain) of the Tribunal, where in para 13 he observes - "No documentary evidence in the shape of loose papers or any other agreements

reflecting payment as "on money" is available on record of the assessing authority", and another finding at page 15 of the impugned order "The assessing Authority in the penalty proceedings made no field enquiry into the facts to find out as to whether the assessee really made any investment over and above what was disclosed originally in the books of account. The explanation thus tendered by the assessee has not been found to be false" (emphasis supplied). According to us, this findings by the learned Accountant Member is wholly perverse, based on no material and contrary to the material on record referred to hereinbefore and was available before all the authorities including the Tribunal. We have reproduced the statements of various persons/Directors just to show the extent of loose papers and incriminating documents found and admitted by the appellants to counter the perverse finding of the learned Accountant Member of the Tribunal.

13. On the contrary, not only the AO but the learned CIT(A) as well as the learned Judl. Member and the learned Third Member have categorically found, as reproduced hereinbefore, that there was ample material, voluminous documents found at the time of survey which resulted into surrender by the appellant. There is concurrent finding of the two Appellate Authorities.

14. A bare perusal of the aforesaid submission of the assessee clearly makes out that in the penalty proceedings the assessee has not even attempted to establish its bona fide nor submitted any explanation worth considering, before the AO during the penalty proceedings. In our view, when the assessee failed to discharge the onus laid down upon it, and did not offer any cogent explanation except a small letter dated 2.3.2010 which has been reproduced in para 5 hereinbefore, during the penalty proceedings before the AO, there is no option but to uphold the findings of fact by all the three Authorities confirming the levy of penalty. Even otherwise, the breach of civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty, irrespective of the fact whether contravention was made by the defaulter with any guilty intention or not. A very heavy onus was placed on the assessee to explain the difference between the assessed income and returned income and the assessee did not discharge the said onus. In the light of the discussion made above and conduct of the assessee, it is thus clear that all the material facts and particulars relating to the assessee''s computation of income were never disclosed by the assessee, and it is only as a result of survey that a clear picture came out on the surface. Admittedly, the statements of the persons or/and the three Directors have never been retracted either during the assessment proceedings or during the penalty proceedings at any stage.

15. The Madras High Court in the case of M.S. Mohammed Marzook (Late) and Another v. Income-Tax Officer [2006] 283 ITR 254 (Mad) held that in a case where original return was filed disclosing an income and consequent to a search proceeding if a revised return has been filed, then the omission or wrong statement by the assessee in the original return was not due to bona fide or any

inadvertence or mistake on his part, but the revised return was filed only after the search action. It further held that though it is the case of the assessee that with a view to purchase peace he offered the sums and non-taxable income, the Tribunal held that there is no material with the assessee to show that the mistake had crept in the original return accidentally without any intention warranting deletion of penalty. On the other hand, the Appellate Tribunal found that the reasons assigned by the Assessing Officer to hold that the assessee had concealed the income are genuine and accordingly, confirmed the penalty. The Madras High Court further held that it is settled law that once the authorities have arrived at a subjective satisfaction under the facts and circumstances of the case, it may not be proper for the Court to enter upon merits of the controversy at all, and unless it is demonstrated that the indication made by the AO to initiate penalty proceedings is mala fide, perverse, based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice, the said proceedings need no interference, and accordingly the Court finding no question of law, much less a substantial question of law, the appeal was dismissed.

16. The Madras High Court in the case of CIT, Madras v. J.K.A. Subramania Chettiar [1977] 110 ITR 602, had an occasion to consider a case under Section 271(1)(c) of the Act where a revised return was filed showing higher income, still higher income was assessed by the AO, and in the said case the assessee had filed original return disclosing an income of Rs. 27,556/-. Assessee filed a second return of income for the assessment year 1963-64 disclosing a total income of Rs. 75,044/- which included business income of Rs. 69,143/-. However, the assessment was ultimately completed on a total income of Rs. 3,15,201/- which included a sum of Rs. 3,09,645/- as income from business. The Madras High Court taking into consideration the aforesaid facts, held that the assessee had intentionally and deliberately concealed the particulars of his income in the first return as well as in the second return, he cannot escape the liability to penalty.

17. The Allahabad High Court in the case of Addl. CIT, Lucknow v. Radhey Shyam [1980] 123 ITR 125, held that even filing of revised return is of no avail and benefit cannot be claimed by a person filing original return knowing it to be false and penalty was leviable on the basis of original return.

18. The Apex Court in a recent judgment in the case of Mak Data P. Ltd. v. CIT [2013] 358 ITR 593 (SC), had an occasion to consider a case where the original return was filed disclosing an income of Rs. 16,17,040/- along with tax audit report, and during the course of assessment proceedings, the AO noticed certain documents comprising share application forms, bank statements, memorandum of association of companies, affidavits, copies of income-tax returns and assessment orders and blank share transfer deeds duly signed, had been impounded. These documents had been found in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of one M/s. Marketing Services (a sister concern of the assessee). The AO then proceeded

to seek information from the assessee and issued a show cause notice dated 26.10.2006. By the show cause notice, the AO sought specific information regarding the documents pertaining to share applications found in the course of survey, particularly, blank transfer deeds signed by persons, who had applied for the shares. Reply to the show cause notice was filed on 22.11.2006, in which the assessee made an offer to surrender a sum of Rs. 40.74 lakh with a view to avoid litigation and buy peace and to make an amicable settlement of the dispute, with the following words used by the assessee :-

"The offer of surrender is by way of voluntary disclosure of without admitting any concealment whatsoever or with any intention to conceal and subject to non-initiation of penalty proceedings and prosecution."

The AO verifying the details and calculations of the share application money added the said amount of Rs. 40,74,000/- and brought to tax as "income from other sources" and assessed total income at Rs. 57,56,700/-. The penalty proceedings were initiated for concealment of income and not furnishing true particulars of its income under Section 271(1)(c) of the Act. The AO imposed penalty under Section 271(1)(c) at Rs. 14,61,547/- which was upheld by the CIT(A), however, was deleted by the Tribunal. The Delhi High Court accepted the plea of the Revenue that there was absolutely no explanation by the assessee for the concealed income of Rs. 40,74,000/-. The High Court took the view that in the absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 is attracted, and reversed the finding of the Tribunal and allowed the appeal. On a further appeal the Apex Court, taking into consideration, the words "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement" etc., was of the opinion that the explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. The assessee in that case had already stated that he had surrendered the additional sum of Rs. 40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income-tax Department. The statute does not recognise these types of defences under Explanation 1 to Section 271(1)(c) of the Act. It is trite law that voluntary disclosure does not release the appellant-assessee from the mischief of penal proceedings. Law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty. Holding so, the judgment of the Tribunal was set aside and the appeal filed by the Revenue was allowed. The Apex Court further observed as under :-

"We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the

Assessing Officer in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. Assessing Officer during the course of assessment proceedings has noticed that certain documents comprising share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on December 16, 2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The Assessing Officer, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.

The Assessing Officer has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the Assessing Officer is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of Section 271(1)(c) has also been elaborately discussed by this Court in Union of India v. Dharmendra Textile Processors (2008) 13 SCC 369 and CIT v. Atul Mohan Bindal (2009) 9 SCC 589."

(emphasis supplied)

19. Taking into consideration the above facts viz-a-viz the instant case, in our view the facts are exactly identical where voluminous unrecorded material was found during the course of survey which were impounded by the AO and consequent thereto a surrender was made by the assessee herein, as in the case of Mak Data P. Ltd. (supra). Rather in the instant case, we find that there are not only documents of several unrecorded purchases coupled with the statements of not only the employees and key persons who had purchased the properties but also of the three Directors accepting in unequivocal terms the undisclosed investment and detailing by way of separate annexures, the manner in which undisclosed investment was made year-wise. Therefore, the judgment of Mak Data P. Ltd. (supra) is squarely applicable.

20. Taking into consideration the above facts and circumstances, and particularly when voluminous documents and statements of various persons, as referred to hereinbefore, in our view it is a proved case of concealment of income and we are also of the view that penalty was rightly imposed by the AO and has rightly been upheld by both the Appellate Authorities in unison based on evidence and is

a finding of fact.

21. We may also deal with some of the case laws cited by the learned counsel for appellant.

22. In the case of T. Ashok Pai v. CIT (supra) tax matters of the said assessee were looked after for a number of years by the Law Agency Division of the Syndicate Bank, Manipal, which was authorised to file the returns of income before the tax authorities representing the assessee. On a return having been filed, Revenue being dissatisfied called for better particulars of investments made by the said assessee whereupon a revised return was filed on 12.1.1990 furnishing all the requisite particulars to the Department. A second revised return was filed on which assessment was made by the AO. The said revised return was accepted by the AO and it was contended, in the penalty proceedings that the assessee had acted bona fide as the tax affairs were being looked after by the professional group working with the Syndicate Bank. However, the said contention was not accepted and penalty was imposed. The Apex Court observed that in the penalty proceedings the authorities must consider the matter afresh as the question has to be considered from a different angle. The said judgment is inapplicable as the AO in the penalty proceedings has considered the material again and has come to a definite conclusion about concealment of income.

23. In CIT v. Anwar Ali (supra), the issue was on different proposition. It held that though addition made in the quantum proceedings is good evidence, but before penalty can be imposed the entirety of the circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. The judgment of Apex Court is inapplicable as the facts of the instant case the assessee himself has come forward and after noticing various statements and the voluminous documents found from the business premises of the assessee itself about offering of an income which was not originally shown or recorded in the books of accounts.

24. The case of CIT v. Suresh Chandra Mittal (supra), relied upon by the learned counsel for the appellant, is yet again on a different proposition as the Apex Court found that the Department has not discharged its burden of proving concealment and has simply rested its conclusion on the act of voluntary surrender done by the asseessee in good faith. However, we have already noticed the judgment in the case of Mak Data P. Ltd. (supra), which is applicable to the facts of the instant case, where as a result of the survey proceedings, the assessee came forward and surrendered only because of the voluminous documents and statements of its employees and person concerned were recorded.

25. In the case of CIT v. S. Khader Khan Son (supra), the Apex Court observed that Section 133A does not empower any IT authority to examine any person on oath, hence any such statement has no evidentiary value and any admission

made during such statement cannot, by itself, be made the basis for addition. This case is also inapplicable to the facts of the instant case because the assessee himself has accepted, surrendered and paid due taxes and has not denied the statements recorded under Section 133A of the various persons. Rather the Directors of the assessee agreed on the statements in unison, which has been quoted extensively and even the surrender made by the assessee ultimately attained finality.

26. The other judgments are inapplicable on the facts of the instant case, therefore, having gone into the issue at length, we are of the view that the finding of fact recorded by the learned Judl. Member and learned Vice President, as the Third Member of the Tribunal, is correct and the penalty was rightly imposed. No question of law, much less substantial question of law arise out of the order of the Tribunal as it is based on appreciation of evidence and is based on pure finding of fact.

27. Consequently, for the reasons aforesaid we do not find any illegality or perversity in the order impugned so as to call for any interference by this Court. The appeal being devoid of merits, is accordingly dismissed.

