

INTERIM BOARD FOR SETTLEMENT-II, NEW DELHI
9TH FLOOR, LOK NAYAK BHAVAN, KHAN MARKET
NEW DELHI 110003
PROCEEDINGS BEFORE THE INTERIM BOARD FOR SETTLEMENT

	Settlement Application No.	KL/KO 51/ 2020-21/10& 11/IT
	Date of filing of application	06.11.2020/11.11.2020
	Order under section	245D(4) of I.T. Act,1961
1	Name & Address of the applicant	1. M/s Cochin Minerals and Rutile Ltd. P.B. No. 73, VIII/224, Market Road, Aluva, Kerala- 683101. 2. Shri Sathivilas Narayanan Kartha Sasidharan Kartha, XVIII/2, Market Road, Alwaye-683101 Ernakulam Dist, Kerala
2	Permanent Account No.	1. AABCC1950D 2. ALIPS1584Q
3	Status	1. Company 2. Individual
4	Assessment years for which the Application for settlement are made	1. & 2. 2013-14 to 2019-20
5	Present for the Pr.CIT	1. Ms. Suman Malik, CIT(DR) 2. Ms. Girly Albert, JCIT
6	Present for the applicant	1. Shri Pranay J. Shah, CA 2. Ms. Dinkle Parmar, CA
7	Interim Board for Settlement's Officer	1. Shri Ravi Prakash DIT(Inv.) 2. Sh. Parikshit Singh, Addl. DIT(Inv.)
8	PCIT's Charge	Pr. CIT(C), Kochi
9	Place of hearing	New Delhi (Through video conferencing)
10	Date of hearing	15.09.2022, 11.04.2023 & 27.04.2023
11	Date of order	12.06.2023

(All Sections and Chapters referred to in this order are with reference to the Income Tax Act, 1961 unless otherwise specified.)

Order Under Section 245D (4) of the Income Tax Act, 1961

The applicants, falling under the jurisdiction of the Pr. CIT(Central),Kochi, filed Settlement Application on 06.11.2020/11.11.2020 for Assessment Years 2013-14 to 2019-20 before the erstwhile Income Tax Settlement Commission, Additional Bench, Chennai. The applications were allowed to be proceeded with further u/s 245D(1) of the I.T Act, 1961 vide order dated 12.11.2020/19.11.2020. Order u/s 245D(2C) was passed on 12.01.2021.

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2. The Pr. CIT's Rule 9 reports dated 31.01.2022 was received on 02.02.2022. In response to the stated reports, Rule 9A reports dated 02.05.2022 was received on 02.05.2022 from the applicant. Thereafter, Vide order dated 13.06.2022 of Central Board of Direct Taxes regarding allocation of cases, the Settlement Applications of IBS-VII, Chennai were allocated to Interim Board for Settlement-II, New Delhi. Accordingly, the cases were transferred to the Interim Board for Settlement-II, New Delhi.

3. In the SOF it has been stated that, the Applicant, M/s. Cochin Minerals and Rutile Limited, is a public listed company incorporated on 18-08-1989 and its share were listed in Bombay Stock Exchange in the year 1992. The commercial production of Rutile had started in the year 1993. Sh. S.N. Shri Sasidharan Kartha, Managing Director and Shri Mathew M. Cherian are the promoters of the applicant company. The applicant is engaged in the business of manufacturing of Synthetic Rutile which is exported to countries like Japan, USA and Malaysia. The other applicant, Shri Sasidharan Kartha, had earned income from the following sources:

- i) Remuneration from M/s Cochin Mineral and Rutile Limited (Income from Salary)
- ii) Dividend income and Bank Interest (Income from other sources)
- iii) Dividend from Foreign entities (Income from other sources)
- iv) Rental Income (Income from House Property)
- v) Agricultural Income.

4. Details of pendency, income returned and the additional income offered before the Interim Board for Settlement are as under:-

1. M/s Cochin Minerals and Rutile Ltd

AY	Date of issuance of notice u/s 153A/143(2)	Date from which proceedings are pending	Income Disclosed in return (Rs.) u/s 153A/139	Additional Income offered before IBS
2013-14	29.11.2019	29.11.2019	66,58,46,870	7,05,99,888
2014-15	29.11.2019	29.11.2019	(4,09,51,545)	11,05,61,705
2015-16	29.11.2019	29.11.2019	(30,26,14,404)	14,06,20,969
2016-17	29.11.2019	29.11.2019	(20,03,28,512)	10,16,51,274
2017-18	29.11.2019	29.11.2019	(8,10,23,402)	3,94,31,757
2018-19	29.11.2019	29.11.2019	23,561,255	10,42,60,708
2019-20	04.03.2020	30.10.2019*	17,03,25,237	1,06,99,547
Total			234,815,499	57,78,25,848

*pertains to the date of filing return of income.



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2. Shri Sathivilas Narayanan Kartha Sasidharan Kartha

AY	Date of issuance of notice u/s 153A/139	Date from which proceedings are pending	Income Disclosed in return (Rs.) u/s 153A/139	Additional Income offered before IBS
2013-14	28.10.2020	28.10.2020	3,41,59,750	4,00,000
2014-15	28.10.2020	28.10.2020	42,57,780	5,00,000
2015-16	28.10.2020	28.10.2020	1,49,68,780	10,00,000
2016-17	28.10.2020	28.10.2020	1,72,03,700	15,00,000
2017-18	28.10.2020	28.10.2020	1,41,09,240	20,00,000
2018-19	28.10.2020	28.10.2020	1,41,21,730	40,00,000
2019-20	27.11.2019	27.11.2019	1,21,25,760	50,00,000
Total			11,09,46,740	1,44,00,000

*pertains to the date of filing return of income.

1. M/s Cochin Minerals and Rutile Ltd

5. Brief facts of case as stated by the PCIT in his Rule 9 report:

"1. M/s Cochin Minerals and Rutile Ltd. is a Public Limited Company incorporated in the year 1989. Registered office of the Company is at Alwaye, Ernakulam, registered address being at P. B. No. 73, VIII/224, Market Road, Alwaye - 683 101, Kerala. The Company is listed with Bombay Stock Exchange. The assessee Company, M/s CMRL, is a 100 percent Export Oriented Unit in the mineral processing sector with manufacturing, marketing and research capabilities. Its main product is Synthetic Rutile which finds application as raw material for Titanium pigment and Titanium sponge/ metal industry. A search under section 132 of the Act was carried out in the case of M/s CMRL on 25/01/2019 covering its office, factory, offices of associated concerns as well as residences of its Managing Director and key employees. Evidences gathered during the search points to massive inflation of expenses in a systematic manner.

2. Facts of the case: The search has revealed two elements of unaccounted transactions:

- That the assessee company has been systematically inflating its expenditure as explained above.
- There has been payments in cash made to individuals which for reasons mentioned in para 11 of this report should be assessed in the hands of Mr Sathivilas Naryanan Kartha Sasidharan Kartha (PAN- ALIPS1584Q) who is the promoter and the Managing Director of M/s Cochin Minerals and Rutiles Ltd. who is also an applicant before the ITSC."



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6. The Rule 9 and Rule 9A Reports have been considered. The following issues emerged from the above reports, which one to be adjudicated upon by this Bench:-

- i. Issue of inflation of Expenses
- ii. Issue of non-consideration of software expenses of Rs. 1,72,00,000/-
- iii. Issue of Undisclosed income offered for the AY 2019-20

6.1 Issue of inflation of Expenses

6.1.1 Comments of the Pr.CIT under rule 9 report:-

"1. Inflation of Expenses: The major head under which inflation of expenses (or booking of bogus expenses) is happening in transportation (transportation of coal, lime, ilmenite, HCl etc.). This apart, expenses booked under the head of sludge handling as well as some other minor heads were also found to be substantially inflated. These payments were invariably made in cash and they are fictitious expenses. It was found that genuine payments made under the heads of transportation are all through bank. In order to generate unaccounted cash (and also to reduce tax liability) bogus cash payments were booked under the heads of transportation, sludge handling etc. Therefore, cash payments booked under these heads are totaled up year-wise and has been quantified at Rs. 135,54,92,072. The assessee company in its application before the Settlement Commission has quantified the fictitious expenses debited under various heads at Rs. 134,27,00,929.

Accordingly, the amount of Rs. 134,27,00,929 has been quantified as fictitious expenses which is reflected as under. There is a difference in the amount quantified by the department and the assessee as given in the table below:

Particulars	Amount Quantified by the Department (In Rs)	Amount Quantified by the assessee(In Rs)
Fictitious expenses debited under the head of transportation, sludge handling, freight and Coolie	99,31,90,589	99,51,70,215
Inflated Payments to Vendors	34,51,01,483	34,75,30,714
Expenses towards Software Series and management consultancy	1,72,00,000	0
Total Fictitious expenses	135,54,90,072	134,27,00,929



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2.2. As can be seen from the above table, the assessee has admitted that it has indulged in booking fictitious expenses in its books of accounts across the relevant years under consideration and against this awareness it has quantified a total of Rs. 134,27,00,929 as bogus expenses in its application. However, the additional income offered for settlement is only Rs.57,78,25,848 by reducing certain expenses from the gross undisclosed income. The assessee has now claimed an amount of Rs. 73,38,35,019 as eligible expenses to be reduced.

These expenses are claimed as under:

Media Expenses	Temple Expenses	Other Expenses	Total
16,43,20,170	17,47,69,864	39,47,44,985	73,38,35,019

2.4 The assessee in its reply to the Rule 6 report stated that entire cash generated was not utilized towards ineligible business expenses. The expenses booked under media is towards advertisement/ marketing, temple is towards puja expenses and other expenses is towards Staff Welfare which are allowable under section 37 of the Act.

2.5. An expenditure can be allowed as deduction only as per provisions of Section 37 of the Act. The Explanation 1 clearly states that expenditure for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The payment made by the assessee are illegal, outside books, in cash is prohibited by law. Wherever payment is made to a public servant it is an offence. Even if it is "to ensure the smooth running of the business with the uninterrupted flow of raw materials and services" as the assessee claims, by virtue of the deeming clause in the explanation, this cannot be allowed as a deduction u/s 37 of the IT Act. If that is indeed the case, why should the assessee have inflated the bills. The issue here is allowability of an expenditure u/s 37 of the Act. The assessee claimed certain expenses, filed audited statements before multiple fora, including the Stock Exchange, to its shareholders, and in its Income Tax Return. These expenses were found to be bogus. These are bound to be disallowed as per the Scheme of the Act. If an Assessing Officer had asked the assessee to produce evidence for any of these expenses and if it was verified, it would have been disallowed by the AO. There was no way, the assessee could have claimed before the AO that the payment was towards an illegal expense and so a bogus bill was raised. An expense claimed in the account which is not genuine has to be rejected. It cannot now claim that it had to generate cash to run its business and so it resorted to bogus expenditure and that if detected by the department, it should be allowed under other heads; without any evidence of such expenditure. Accepting of

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this claim will lead to other businesses resorting to such explanations, which will undermine the faith of the common man in the taxation system.

2.6 The assessee is also trying to relate bogus expenses and certain unexplained payments. It is incorrect to telescope and allow bogus expenditure against claim of 'illegal' payments. Some other payments have been claimed as for business purposes, like payment to temple, media etc. If it was for payment to the Temple, to the media persons etc, which was allowable under section 37 of the Act, the assessee would have brought this fact before the Auditor and claimed as expenses. The assessee is audited by a Chartered Accountant who verified and claimed the expenses as correct and at that time such claims were not made. The assessee is carefully plotting to confuse the Hon'ble Settlement Commission by linking.

2.7 The claim deduction of eligible business expenses is contradictory to its own admission before the ITSC. In the first place it has admitted that it has booked bogus/fictitious expenses to generate cash to make certain illegal payments to individuals/entities due the nature of its business. Secondly, it is claiming that part of these expenses are allowable u/s 37 of the ACT. This claim of the assessee is grossly unfair, contradictory and factually incorrect. This claim is against what the assessee and his employees had admitted in a sworn statement. Pursuant to search operation carried out on assessee-company, material was collected which evidenced that the assessee has been indulging in massive inflation of expenses in a systematic manner which is illustrated below.

3.1 Findings of the Search: Verification of seized materials revealed that there is massive over-statement under the heads of transportation and sludge handling. By booking bogus expenses under these heads, an equivalent amount of cash is being taken out. Two methods are being adopted for this. Firstly, huge amounts are being booked under transport and sludge handling and entire amount is shown as paid in cash. At the end of the financial year, such huge entries booked under transport (say 50 lakhs or 1 Crore) are split up into smaller payments, each below 20,000.

3.2 The second method adopted by the assessee Company involves few related concerns - like Industrial transporters & contractors, Excel transporters, Vahini, Adco etc. These are concerns in the name of persons who are closely associated with CMRL (some of them being former employees). These concerns provide services like labour supply, transport, sludge handling etc to M/s CMRL on a contract basis. Payments to these concerns are through bank. However, it is found that, these concerns are paid (through bank). These payments are claimed as expenses. Some payments are withdrawn (almost always in round figures - say 5 lakh, 10 lakh, 20 lakh, 30 lakh

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etc - in frequent intervals) are immediately withdrawn in cash and given back to Shri Suresh Kumar, CFO of CMRL. Such receipt of cash back by an employee cannot be accepted as genuine expenses of the company.

3.3 It was found that cash payments booked under the head of transport are all bogus. Expenses like illegal cash payments to individuals, payments to media houses, donations to temples etc. (which would not qualify as an allowable expense under the provisions of Income Tax Act) are debited to the P & L under the garb of transportation expense. This serves the twin purposes of Tax evasion and generation of unaccounted cash. Allowing the claim of expenses of the assessee as per table in para 2.1 will lead to,

- Claiming unsubstantiated expenses as genuine expenses violating the provisions of the Act
- Admitting the accounts that has been certified as true and correct before multiple fora as incorrect.

3.4 Shri K M Vasudevan, cashier (who enters these cash payments in tally) has admitted (in his statement u/s 132(4) on 25-01-2019 that "the amounts paid to different parties are bunched together and entered in tally under the head TRANSPORTATION CHARGES in respect of coal, lime, Ilmenite, HCl etc." He has further stated that "at the year end, bigger amounts so entered are split to small amounts under Rs. 10,000 in the same transportation head itself."

3.5 Yet, even when such payments are split up, the aggregate figure for the day would correspond to illegal cash payout during the day. The correlation is more evident in days where higher amounts are paid (say 50 lakhs). For example as per the seized material CHN/EKM/S&S-22/KN/18-19/T-2/A-3 page 8, there was a payment of Rs. 50,00,000 to "MANGALAM" on 03/10/2016. There are smaller payments to other parties as well on that particular date. It is seen that these payments has been booked under "Transp. Coal" in the Tally. This is not done as a single entry. Instead, as many as 298 entries are there (from voucher number 5342 to 5639 each payment just below Rs. 20,000) and the total of such payments for that day works out to Rs. 54,78,373.

3.6 Findings of the Department in this regard was also admitted by the employees and the M D in their statements u/s 132(4). At the time of PO operation at the business premise of M/s CMRL on 18/02/2019, statement of Shri K S Suresh Kumar was recorded u/s 132(4). In his statement, Shri K S Suresh Kumar was specifically asked about the purpose for making such huge payments. As per his reply, the Company is receiving large number of threats to obstruct its

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business or hinder smooth functioning. In order to overcome these threats, and to obtain cooperation, illegal payments are being made to various individuals and media houses etc. There is a clear admission by the employee of the company that the payments are illegal. Now the assessee is clothing them as temple expenses, other expenses, etc. This is clearly an after thought to reduce its tax liability.

4.1 Cash Payments to Various Persons: During the course of search in the residence of Shri K S Suresh Kumar, CFO of the Company (at "Sreelakshmi", Kunnukara P O, near Ahana Auditorium, North Paravur), hand written loose sheets were recovered which clearly mentioned the details of payments made to politicians, temples, Government servants, media houses etc. These papers were kept in bunches inside a suitcase kept in a loft in the bedroom. Shri Suresh Kumar is a trusted employee of the Company, working there for 27 years and was its CFO at the time of search.

4.2 The material seized from the residence was subsequently shown to Shri Suresh Kumar. He identified the contents and admitted that these are payments made in cash to various persons on various dates. Questions put to Shri K S Suresh Kumar and his reply in his statement u/s 131 (recorded on the same day (25/01/19) at around 9 PM at the Corporate Office) are reproduced here under:

Q. No.7. I am showing you loose sheets serially numbered from 1 to 40 in CHN/EKM/S & S - 22/ST/2018-19/05 seized during the Income Tax search conducted at your residence on 25-01-2019. Please explain the contents.

Ans. This is a rough note maintained by me in which various transactions are noted for my own reference.

1. As stated already, the name of some of the recipients are given in an abbreviated manner. Names like 'P V', 'O C', 'K K', 'I K', 'R C' appear at different places in these loose sheets. Shri K S Suresh Kumar was asked to explain these short forms. Question number 8 and his reply are given below:

"Q. No.8. I am showing you loose sheets serially numbered from 1 to 49 in CHN/EKM/S & S - 22/ST/2018-19/06 seized during the Income Tax search conducted at your residence on 25-01-2019. Please explain the contents. Please also explain the short forms used in the book



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Ans: This is also a rough note maintained by me for my own reference. The various short forms as mentioned in page No. 29 are:

*KK → Kunjali Kutty
A G → A. Govindan
O C → Oommen Chandy
P V → Pinarayi Vijayan
I K → Ibrahim Kunju
R C → Ramesh Chennithala"*

2. Yet another statement of Shri K S Suresh Kumar was recorded u/s 132(4) at the time of P O operation at the corporate office of M/s Cochin Minerals and Rutile Limited on 18/02/2019. Qn. No.s 2 to 5 and their replies are reproduced here under:

Q.No.2. I am showing you loose sheets seized vide CHN/EKM/S & S – 22/ST/2018-19/01 during the course of search at your residence on 25-01-2019. Please explain the contents of the same.

Ans. I have seen the seized material i.e loose sheets serially numbered from 1 to 154. The loose sheets contain details of payments made on behalf of M/s Cochin Minerals and Rutile Limited. The details of payments are recorded by Shri K M Vasudevan who is working as cashier at M/s Cochin Minerals and Rutile Limited. I have prepared the consolidations of such payments. The same are also contained in the seized material eg: page No. 153, 154, 132, 133, 143 etc. have been prepared by me.

Q. No.3. It is seen from the seized material number CHN/EKM/S & S – 22/ST/2018-19/01 large numbers of payments have been made to different individuals and entities. Please explain on whose instructions such payments have been made.

Ans. The payments were made on the instructions of our Managing Director Shri S N Sasidharan Kartha.

Q. No.4. Please state who made these payments and in which form these payments were made.

Ans. The payments were made on the instructions of our MD Shri Sasidharan Kartha by Shri Suresh Kumar P, General Manager (Finance) or me. Normally these payments are given to the individuals mentioned in the loose sheets directly at their office/

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residences. In some cases, the representatives of the individuals mentioned in the loose sheets at our office. These payments were made only in cash. No receipt or any other form of acknowledgement was given by the individuals receiving the payments.

Q. No. 5. Please state for which purpose the payments were being made.

Ans. These payments were being made to functionaries/ members of various political parties, media houses, police etc. for smooth functioning of our business especially in view of the fact that we obtain Ilmenite which is mined by PSUs as our raw material. This inturn is having environmental impact, due to that we receive large number of threats to obstruct our business or to hinder smooth functioning of our day to day activities. In order to overcome these threats and to obtain co-operation we make number of payments to members/ functionaries of various political parties, state police, media houses so as to ensure smooth functioning of our day to day activities. These payments are made as demanded by them."

4.3. Thus, the evidences seized and the statements recorded from the key persons during the course of search reveal the following facts:

- There are huge payments (running into Crores) to various politicians, Government servants, trade union leaders, media houses, temples etc.
- These payments are invariably in cash.
- Detailed record of payments so given is maintained. Date of payment, amount paid and name of recipient are clearly given. In some cases, the name of payee is given as abbreviation (P V, O C etc.) and the expansion has also been given by Shri K S Suresh Kumar. (Day to day entries of payments are made by Shri K M Vasudevan, cashier. Occasionally we do find consolidations also and the same are prepared by Shri K S Suresh Kumar, CFO.
- Payments are made and the records are kept as per the direction of the Managing Director Shri S N Sasidharan Kartha.
- The seized material showing the particulars of payments were shown to Shri K M Vasudevan and Shri K S Suresh Kumar. Both of them identified their respective hand writings and admitted that these are records of routine cash payments made as per the direction of Shri S N Sasidharan Kartha.

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- These seized materials and statement of Shri. K M Vasudevan and Shri K S Suresh Kumar were shown to Shri P Suresh Kumar, the General Manager, Finance. He too admitted that these are details of cash payments made as per the direction of the Managing Director Shri S N Sasidharan Kartha.
- Finally, the seized materials as well as the statements of all the above mentioned employees were shown to Shri S N Sasidharan Kartha, the Managing Director. In his statement u/s 132(4), Shri Sasidharan Kartha admitted that these are the records of cash payments made to various parties as per his directions.

5. Analysis of evidences gathered during the search has clearly brought out that inflation of expenses are to such an extent that if all those bogus claims are added back, the Company would have registered substantial profits in each of the financial years under consideration (whereas, as per the returns filed, the Company has been reporting losses since assessment year 2014-15). As elaborated under modus operandi, genuine payments and bogus payments has been clearly differentiated in the tally software maintained by the assessee in its corporate office. The findings of the search as detailed above has been corroborated by the statements of people involved in the manipulation - cashier, CFO, GM (Finance) and finally the Managing Director. Based on the above concrete evidences, the total unaccounted income of the assessee company for the relevant years has been worked out by the Department at Rs. 135,54,90,072.

6. Admission before the ITSC: The assessee in its application has admitted the amount of Bogus Expenses at Rs. 134,27,00,929 without considering the Software expenses of 1,72,00,000. Further, it claimed that out of the admitted bogus Expenses, an amount of Rs.73,38,35,019 are eligible business expense . Also it has claimed that an amount of Rs. 3,10,40,062 is disallowed in the return filed u/s 139(1) for the AY 2019-20 . Thus it has admitted a net amount of Rs.57,78,25,848 as undisclosed income for the relevant years.

7.1. Department's observations on the claims of the assessee company.

- a. Eligible Expenses of Rs. 73,38,35,019: It is reply to Rule 6 report, the assessee has stated that it has incurred genuine business expenditure towards temples in the state, media and others comprising of staff , transportation etc. which are imperative to be incurred towards running of business, social welfare, staff welfare and towards advertisement and business promotion of the assessee. The gist of the assessee submissions in this regard is summarized below:



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- These are genuine expenses incurred towards the general welfare of the Society and were reflected under these respective heads in the seized material.
 - Cash generated through vendor payments included payments made towards genuine transportation services. Therefore, genuine payments made to the transport contractors which are supported by documentary evidence are claimed as reduction from the total cash generation admitted.
 - These eligible expenses were reflected for a part period in the seized materials and are therefore annualized for the respective years and claimed as rebate against the gross undisclosed income offered.
- b. The contentions of the assessee is contrary to actual facts and evidences seized during the course of search. As already detailed in the earlier paras of this report, the assessee was indulging in inflation of expenses in a systematic manner for which specific evidence was obtained during the search. The assessee cannot now claim that some of such expenses paid to media houses, temples are eligible business expenditure while admitting that cash generated for these payments are by inflating the expenses. If the payments to temples and for general welfare of the society the assessee should have done it under its CSR activity. That is to be carried out of the tax paid expenses as per the scheme of the Act. And there is no further deduction allowable as per Section 37 (1).
- c. The quantification of Rs. 135,54,90,072 is arrived on the basis of specific entries made in the Tally accounts of the assessee company for such fictitious/ bogus expense over the relevant years. The settled position of law is that an assessee would not be entitled to deduction of payments made in contravention of law. Similarly, payments which are opposed to public policy being in the nature of unlawful consideration cannot equally be recognized. It cannot be held that businessmen are entitled to conduct their business even contrary to law and claim deductions of payments as business expenditure, notwithstanding that such payments are illegal or opposed to public policy. The claim of the assessee is to be rejected as contrary to the scheme of the Act and to the public policy.
- d. The assessee is claiming that these are genuine expenses for the general welfare of the Society. The assessee has not claimed that these expenses are for the purpose of business and has, therefore, not attempted to establish commercial expediency of such expenses. In the absence of commercial expediency such expenses are not an allowable business

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expenditure. If it was genuine why did the assessee, a public limited company should have shown these in its accounts and submitted them before its own shareholders.

e. The assessee' claim of Rs. 73,38,35,019 is bifurcated as below.

Media Expenses	Temple Expenses	Other Expenses	Total
16,43,20,170	17,47,69,864	39,47,44,985	73,38,35,019

7.2 As can be seen from the above the assessee has not given the detailed break up of these expenses , the entities/ persons to whom such payments are made, the nature and purpose of such payments, details like name, address and PAN of such persons/ entities. Further, no commercial expediency is established for incurring above these expenses. The assessee has simply given a vague statement that these are eligible business expenditure. The question here is, if these expenses are eligible business expenses as claimed, the assessee ought to have demonstrated or clarified as to why these expenses were not claimed as genuine expense in its regular books of accounts. Further, these payments are not made during the regular course of business, or by prescribed mode of payment. Therefore, on this count also the said expenses are not allowable expenses as per the provisions of the Act. In view of the exhaustive analysis given above, the claim of the assessee to reduce an amount of Rs. 73,38,35,019 is without any merit and may be rejected."

6.1.2 Applicant's reply under Rule 9A report:-

"1.1 Upon perusal of the above contention of the PCIT, the following observations are made by the department as under:

- 1) Expenditure for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession.
- 2) PCIT's observations pertaining to the applicant's reply to rule 6 report:
 - If the payments were to be made to temples and for general welfare of the society, the applicant should have done it under its CSR activity.
 - The claim of the applicant is to be rejected as contrary to the scheme of the Act and to the public policy.
 - In the absence of commercial expediency such expenses are not an allowable business expenditure.

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- The applicant has not given the detailed break up of these expenses, the entities/ persons to whom such payments are made, the nature and purpose of such payments, details like name, address and PAN of such persons/ entities.
- The applicant ought to have demonstrated or clarified as to why these expenses were not claimed as genuine expense in its regular books of accounts and in the prescribed mode.
- If applicant's claim is accepted then whether, it is in the nature of income in the hands of the recipients.

3) The evidences seized and the statements recorded from the key persons during the course of search reveal that:

- Huge payments are made to various politicians, Government servants, trade union leaders, media houses, temples etc. in cash.
- Detailed record of payments so given is maintained (Date of payment, amount paid and name of recipient are clearly given) as per the directions of Shri S N Sasidharan Kartha.
- This claim of reduction is against what the applicant and his employees had admitted in the sworn statements.

1.1. In this regard, the assessee submits as under:

Claim of eligible expenditure - Rs. 73,38,35,019/-

1.1.1. The department in its report has primarily raised the issue pertaining to the allowability of claim of Rs. 73,38,35,019/- against the gross undisclosed income offered by the applicant on the surmise and assumption that all the payments were illegal payments prohibited by law. The department has not disputed the quantification as per the seized materials but merely raised issue pertaining to the legality of the claims made by the applicant for want of supporting evidences.

1.1.2. In this regard, it is submitted that the statutory presumption laid down in section 292C of the Act states that the entries in the seized material is true in the absence of any other corroborative evidence Thus it further supplements the factual evidence available in the seized material.

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- 1.1.3. It is submitted that the applicant has claimed reduction only towards the genuine payments of **Rs. 73,38,35,019/-** incurred towards running of business and staff welfare and also towards advertisement and business promotion of the applicant which are eligible u/s 37 of the Act. The same was repeatedly stated by the applicant right from the time of post search proceedings. It is pertinent to note that no rebate has been claimed towards balance ineligible expenses which cannot be substantiated by the applicant with documentary evidences. Thus, the same have been duly offered to tax as elucidated in the settlement application filed before the Hon'ble Settlement Commission.
- 1.1.4. This is further corroborated with Shri K.S. Suresh's response to question 5 of sworn statement dated 29-01-2019 wherein he has stated that not all payments made are bogus. Only few payments are made against bogus expenses. Thus, the remaining are actual/genuine expenses. This statement was made under the presumption that there could be an error in maintenance of voluminous records resulting in non-availability of few invoices upon verification.
- 1.1.5. With regard to the contention of the department that *"if the payments were to be made to temples and for general welfare of the society, the applicant should have done it under its CSR activity"* the applicant submits that the said expenditure was on account of media, temple (i.e, expenditure on pooja and celebrations of festivals) and other expenses (i.e. staff welfare) which do not qualify as activities related to welfare of the society and upliftment/improvement of minorities, etc., enlisted under the terms of Companies Act, 2013. These expenses are merely applicant's business expenses for its employees and business promotion allowable u/s 37 of the Act.
- 1.1.6. Section 37 of the Act is a residuary section for allowability of expenditure which is incurred wholly and exclusively for the purpose of business. Any expenditure which results in any direct or indirect benefit and growth of the business is allowable u/s 37 of the Act. Thus, in the case of the applicant, expenses incurred towards staff welfare towards advertisement and business promotion of the applicant which are eligible u/s 37 of the Act.
- 1.1.7. In this regard the applicant relies on the following decisions:
- The Hon'ble High Court of Madras in the case of Madura Coats Ltd. 24 DTR 24 held that *"Expenditure incurred by the assessee on community assistance programme and the*

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welfare measures undertaken in the vicinity of the manufacturing unit which also benefited its employees is allowable as business expenditure."

- The Hon'ble ITAT in the case of Spice Communications Ltd. 35 SOT 78. Held that "by incurring expenditures on advertisement and sales promotion, the assessee had not acquired any fixed capital asset, yet these expenditures were incurred for earning better profits and for facilitating the assessee's operation of providing cellular mobile services. Thus, there existed direct nexus between the advertisement and sales promotion expenses and the carrying out of the business activity of the assessee."
- The Madras High Court in the case of Aruna Sugars Ltd in 132 ITR 718 (MAD.)"The these expenses were incurred for the poojas, etc., performed by the workers and that they should form part of the welfare expenses. It also pointed out that, similarly, expenses on bakshish and presentation were found to have been incurred in respect of the workers alone. Hence, the Tribunal did not find any reason for the disallowance of these claims"

1.1.8. Further, with regard to the contention of the department that "as to why these expenses were not claimed as genuine expense in its regular books of accounts and in the prescribed mode", the applicant submits that the applicant operates in the industry wherein the applicant is forced to make such payments at the insistence of the concerned party, or laborers/workers who do not have bank accounts. Such incidental expenses have to be incurred in cash as a general practice followed in the industry in which the applicant operates to ensure smooth running of the business. It is submitted that these are genuine expenses.

1.1.9. With regard to "commercial expediency", the applicant submits that the above-mentioned expenses were required to be made for the business purposes which boosts the employees performance and growth of business. Hence, it indirectly benefits the business of the applicant. Therefore, there was commercial expediency in incurring such expenses.

1.1.10. In this regard, the applicant relies on the decision of DCIT Vs Deloitte Haskins and Sells (ITAT Ahmedabad) in ITA No. 2970/Ahd/2017 on 08-04-2021 wherein it was held that "commercial expediency" refers to such expenditure which a prudent businessman incurs for the purpose of business. Such expenditures might not have been incurred under any legal obligation, but the same are allowable as a business



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expenditure if it directly or may even indirectly benefit the business in form of increased turnover, better profit, growth, etc.

The Assessing Officer cannot question the reasonableness by putting himself in the arm-chair of the businessman and assume status or character of the assessee and that it is for the assessee to decide whether the expenses should be incurred in the course of his business or profession or not. Courts have also held that if the expenditure is incurred for the purposes of the business, incidental benefit to some other person would not take the expenditure outside the scope of Section 37(1) of the Act. Further, it is settled law that the commercial expediency of a businessman's decision to incur a particular expenditure cannot be tested on the touchstone of strict legal liability to incur such expenditure."

Hence the applicant submits that merely based on the assumption of the department that there was no commercial expediency for incurring these expenses, the same cannot be considered as illegal expenses.

- 1.1.11. The applicant brings to your kind attention that what needs to be taxed is the profit embedded in the transactions and not the gross sum. The applicant should be allowed to claim genuine eligible expenses incurred out of the undisclosed income.
- 1.1.12. In this regard, the applicant relies on the decision in the case of Kishor Mohan Lal Telwala v. Asstt. CIT [1999] 107 Taxman 86 (Mag.) (Ahmedabad-Trib.), wherein evidence was unearthed about on-money received on sale of flats. The Tribunal held that what could be taxed as undisclosed income was a reasonable amount of profit earned by the assessee out of on-money but not the entire on-money. Further, Hon'ble High Court of Gujarat in the case of CIT vs Samir Synthetic Mill [2010] 326 ITR 410 (Gujarat) also took a similar view and held that "*the addition was justified on account of suppression of sale consideration but only to the extent of profit.*"
- 1.1.13. Further with regard to the contention of the department that "*The applicant has not given the detailed break up of these expenses, the entities/ persons to whom such payments are made, the nature and purpose of such payments, details like name, address and PAN of such persons/ entities*" it is submitted that the detailed break up of expenses is already forming part of the seized materials which is available with the department.



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- 1.1.14. Further, the applicant submits that no proper records were maintained for the transactions incurred outside banking channel, except for broad category-wise expenses, as evident from the seized materials wherein the expenses were available only part period and incomplete. Hence, in the absence of any corroborative evidence, it is prayed that the seized materials may please be treated as evidence in support of the claim made by the applicant as per presumption laid down u/s 132(4A) of the Act. As held in the case of In the case of CIT v. Damac Holding (P.) Ltd. [2018] 89 taxmann.com 70/253 Taxman 123 (Delhi), In this case, evidence was found in the seized paper that the assessee had incurred expenditure for land development. It was held that the presumption u/s 132(4A) would be available to the assessee in the absence of further proof.
- 1.1.15. The department itself in its report has stated that payments reflected in the seized materials reflect the head under which its made such as temple, media, etc. along with some party names. Hence the same may be presumed as true and evidence in support of the eligible expenses claimed by the applicant.
- 1.1.16. Thus, considering the above submissions, the applicant submits that it is eligible to claim the above expenses to the tune of Rs. 73,38,35,019/-which may be verified during the course of further proceedings.

Alleged illegal Cash Payments to various persons:

- 1.1.17. The contention of the department that illegal payments were made by applicant is purely based on the statements made during the search wherein leading questions were sought from the key employees and managing director who erroneously admitted that payments were to parties without any proper deliberation of the seized materials and knowledge of the repercussions of making such statements.
- 1.1.18. The department ought to have considered that the retraction affidavits were filed by the respective employees and the Managing Director wherein it was clarified that no illegal payments were made by the applicant. The same was also clarified in the settlement application filed by the applicant.
- 1.1.19. Hence the applicant reiterates there traction filed by the managing director Shri S N Kartha as under:

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10. "I was sought a leading question in Q3, Q4, and Q5 of my sworn statement dated 22-03-2019, based on the statements given by Shri K S Suresh kumar (His role in the organization is limited to handing over cash to the persons as directed by me and has also stated that he is not aware the background of person receiving the money). In response to the same I was misled into stating that the cash payments were made towards newspapers, political parties, police and other ineligible expenses. It is now clarified that the above responses were given unintentionally to ensure conformity with the statement of Shri K S Suresh kumar which is totally without any basis and the same does not relate to payments made towards aforesaid expenses. The names reflected in the seized material are regular vendors of CMRL providing business related services from time to time which is discernable upon careful verification of the same.

11. It is further submitted that Shri K.S. Suresh Kumar, Shri Vasudevan and myself in response to various queries sought by the department had stated that 'cash payments were made to parties'. It is clarified to curb any dilemma that the statement implies that payments were made to parties towards regular business expenses which are backed by third party evidences.

12. Since I was under tremendous stress during the search, these statements were made by me on surmise without proper verification of the seized materials therefore I retract my statements made on pure assumptions with regard to the nature and eligibility of these expenses as stated in response to questions of the sworn statements given by me during the search proceedings."

1.1.20. Thus, it is emphasized that the payments were made to regular vendors towards business activities which were made in cash. However, the applicant does not have the details of such transactions and thus the cash generated for such payments is offered to tax before the Hon'ble Interim Board.

1.1.21. In this connection the applicant further submits that sworn statements cannot form the sole basis for concluding that the payments were illegal in nature particularly when the applicant has withdrawn the statement vide retraction affidavit filed on 23-10-2020. The applicant relies on the decision of the Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 wherein it was held that an admission should not be treated as conclusive nor could it form the sole basis of assessment. Reference was also made to the Board's

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Circular in F.No. 286/2/2003-IT (Inv.) dated 10-3-2003 (Appendix 4) wherein the CBDT has given categorical directions to the departmental officers that undue emphasis should not be placed on obtaining confessions in the statements recorded in the course of search or survey and, instead, emphasis should be placed on collection of evidence.

- 1.1.22. Further, in the case of Kailashben Manharlal Chokshi v. CIT [2010] 174 Taxman 466 (Guj.) wherein it was stated that even where a confession is inculpatory, it has to be corroborated by independent evidence, particularly when it is retracted and there are doubts about the authenticity of the statement. This was so decided in the case of PangambamKalanjoy Singh v. State of Manipur AIR 1956 SC 9.
- 1.1.23. Thus, the department has merely relied on the sworn statements without producing any corroborative evidence to prove that the payments were illegal in nature.
- 1.1.24. The department has sought to verify (PAN, Name, etc..) whether the payments made to the respective party has been offered to tax in their respective Return of Income, the applicant submits that proper records were not maintained for the payments made as evident from seized materials. However, it is pertinent to note that the sources of the payments have been offered to tax before the Hon'ble Interim Board and hence taxing the same in the hands of parties would result in double taxation of the same Income.
- 1.1.25. Further, the applicant reiterates that the entire cash generated for making such payments have been offered to tax except for rebate claimed towards the payments made for the genuine eligible expenses.

6.1.3 PCIT's submissions dated 31.08.2023

"1. The applicant has reiterated its earlier contention that the expenses amounting to Rs.73,38,35,109 are genuine business expenses. While asserting that the said expenses are genuine business expenses, the applicant has failed to substantiate why these expenses were not claimed in their regular books of accounts before the search. It is stated that the applicant was forced to make such payment at the insistence of concerned party and the breakup of such expenses cannot be provided as no proper records are maintained.



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2. The claim deduction of eligible business expenses is contradictory to its own admission before the ITSC. In the first place it has admitted that it has booked bogus/fictitious expenses to generate cash to make certain illegal payments to individuals/entities due the nature of its business. Secondly, it is claiming that part of these expenses are allowable u/s 37 of the ACT.

3. An expenditure can be allowed as deduction only as per provisions of Section 37 of the Act. The Explanation 1 clearly states that expenditure for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The payment made by the assessee are illegal, outside books, in cash is prohibited by law. Wherever payment is made to a public servant it is an offence. Even if it is "to ensure the smooth running of the business with the uninterrupted flow of raw materials and services" as the assessee claims, by virtue of the deeming clause in the explanation, this cannot be allowed as a deduction u/s 37 of the IT Act. If that is indeed the case, why should the assessee have inflated the bills. The issue here is allowability of an expenditure u/s 37 of the Act. The assessee claimed certain expenses, filed audited statements before multiple fora, including the Stock Exchange, to its shareholders, and in its Income Tax Return. These expenses were found to be bogus. These are bound to be disallowed as per the Scheme of the Act. If an Assessing Officer had asked the assessee to produce evidence for any of these expenses and if it was verified, it would have been disallowed by the AO. There was no way, the assessee could have claimed before the AO that the payment was towards an illegal expense and so a bogus bill was raised. An expense claimed in the account which is not genuine has to be rejected. It cannot now claim that it had to generate cash to run its business and so it resorted to bogus expenditure and that if detected by the department, it should be allowed under other heads without any evidence of such expenditure.

4. Here it is very much relevant to quote the excerpts from the recent land mark judgement of the Hon'ble Supreme Court in the case of *Apex Laboratories (P) Ltd* in a case of gifting of freebies by Pharmaceutical company to medical practitioners

"Section 37 is a residuary provision. Any business or professional expenditure which does not ordinarily fall under sections 30-36, and which are not in the nature of capital expenditure or personal expenses, can claim the benefit of this exemption. But the same is not absolute. Explanation 1, which was inserted in 1998 with retrospective effect from 1-4-1962, restricts the application of such exemption for "any purpose which is an offence or which is prohibited by law". The IT Act does not provide a definition for these terms. Section 2(38) of the General Clauses Act, 1897 defines 'offence' as "any act or omission made punishable by any law for the time being in force". Under the IPC, section 40 defines it as "a thing

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punishable by this Code”, read with section 43 which defines ‘illegal’ as being applicable to “everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action”. It is therefore clear that Explanation 1 contains within its ambit all such activities which are illegal/prohibited by law and/or punishable.”

This Court is of the opinion that such a narrow interpretation of Explanation 1 to section 37(1) defeats the purpose for which it was inserted, i.e., to disallow an assessee from claiming a tax benefit for its participation in an illegal activity. Though the memorandum to the Finance Bill, 1998 elucidated the ambit of Explanation 1 to include “protection money, extortion, hafta, bribes, etc.”, yet, ipso facto, by no means is the embargo envisaged restricted to those examples.

It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (ex dolomalo non oritur action) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self-defeating. Doctors and pharmacists being complementary and supplementary to each other in the medical profession, a comprehensive view must be adopted to regulate their conduct in view of the contemporary statutory regimes and regulations

It is also a known principle that what cannot be done directly, cannot be achieved indirectly. As was said in Fox v. Bishop of Chester [1824] 2 BFC 635 Jagir Singh v. Raubir Singh [1999] 2 SCR 282 that it is a :

“Well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance”

And that

“To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined”

The Appeal of the assessee was dismissed by the Hon’ble Court.

2. The applicant, M/s Cochin Minerals and Rutile Ltd. is a Public Limited Company. The founder Managing Director of the applicant company and other directors of the company are holding the post in trust. The conduct of the applicant as is evidenced consequent to the search



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points to the facts the Managing Director and other key employees of the company have actually deceived its shareholders by indulging in corrupt practices. This amounts to committing a breach of trust, which also is clearly an offence prohibited by law which is not an allowable expenditure under the Income tax Act.

3. Discussion on the Case decisions relied on by the Applicant:

- **Madura Coats Ltd 24 DTR 24:** The facts are different. In this case the assessee has claimed deduction in its regular books. In the case of the applicant, the expenditure is surreptitious, unethical and not recorded as such in its regular books of accounts. The case decisions does not apply to the facts of the applicant's case.
- **Spice Communications Ltd 35 SOT 78:** The issue here is part disallowance of Advertisement Expenses claimed in its regular books of accounts as Capital Expenditure, treating it as brand Building expenses. This case decision cannot be applied to the facts of the Applicant case.
- **Aruna Sugars Ltd 132 ITR 718:** Pooja expenses debited in the books held to be allowable as business expenditure. This case decision cannot be applied to the facts of the Applicant case.
- **DCIT Vs Deloitte Haskins and sells (ITAT Ahmedabad):** The expenses are claimed in regular books of accounts and hence cannot be applied to the facts of the applicant's case.

The distinguishing factor in the case decisions relied on by the applicant is that in all these cases, the expenditures are debited in the regular books of accounts and the dispute was regarding allowability of such expenses under the provisions of the Act. In the case of the Applicant Trust, payments are made outside the books in cash out of the cash generated by claiming bogus expenses. Further, the recipients of such payments have not included such receipts in their income. These payments are illegal payments prohibited by law and hence cannot be allowed as deduction u/s 37 of the IT ACT.

The reliance of the judgements in the case of Kishore Mohan LalaTelwala Vs AsstCIT and like where, the Hon'ble courts have held that what is to be taxed is undisclosed profits and not the undisclosed receipts will not support the applicant case. As elaborately discussed in the rule 9 report and also in the instant report, the applicant company has inflated the expenses to show lesser profit. Evidences gathered during the search points to the fact that the cash generated out of such inflated expenses have been use to make illegal payments to people from political parties ,

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media and others. The applicants contention that these payment in cash outside the books were necessitated due to the nature of its industry is not acceptable. In this group of cases, clear evidences indicating that the Company was indulging in corrupt practices over a period of several years with the consent and connivance of the promoter -Managing Director, Shri S.N. Sashidharan Kartha and the key persons of the Company like the Chief Financial Officer. Huge amounts of money have been siphoned off from the Company accounts resulting in significant loss to the shareholders/investors of the Company. It is very much relevant to quote the observations of the Hon'ble Supreme court in the case of Apex Industries as under:

It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (ex dolomalo non oritur action) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self-defeating.

6.1.4 Further submissions of the applicant dated 25.04.2023

"With regard to the Claim of Eligible Expenditure - Rs. 73,38,35,019/-, it is submitted as under:

2. It is firstly submitted that right from the time of filing the settlement application, the applicant has repeatedly stated that out of the gross undisclosed income of Rs.134,27,00,929/-, the applicant has incurred genuine eligible business expenditure of Rs.73,38,35,019/- as evident from the prima facie perusal of seized materials (The sample copy of the seized material is duly enclosed in pages 220 to 240 of the APB-III) towards temples in the state, media and others comprising of staff welfare, transportation, etc.. which are imperative to be incurred towards running of business, social welfare, staff welfare and towards advertisement and business promotion of the applicant as tabulated under:

AY	Total Media expense (Annualized) (Rs.)	Total Temple expense (Annualized) (Rs.)	Total other expenses (Annualized) (Rs.)	Total eligible expenses (Rs.)
(a)	(b)	(c)	(d)	(e)=(b)+(c)+(d)
2013-14	-	1,96,50,791	5,55,84,722	7,52,35,512
2014-15	-	2,12,92,403	12,76,29,058	14,89,21,461
2015-16	9,37,47,313	-	-	9,37,47,313
2016-17	3,18,42,857	4,44,15,342	5,98,55,339	13,61,13,538
2017-18	3,13,50,000	4,47,15,192	5,69,76,405	13,30,41,597
2018-19	73,80,000	2,63,36,298	6,29,90,329	9,67,06,627
2019-20	-	1,83,59,838	3,17,09,133	5,00,68,971
Total	16,43,20,170	17,47,69,864	39,47,44,986	73,38,35,019

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3. The primary issue raised by the department pertains to the allowability of claim of Rs.73,38,35,019/- against the gross undisclosed income offered by the applicant on the surmise and assumption that all the payments were illegal payments prohibited by law. The department has not disputed the quantification as per the seized materials but merely raised issue pertaining to the legality of the claims made by the applicant for want of supporting evidences.

4. Further during the course of hearing u/s.245D(4) of the Act held on 11-04-2023 in the applicant's case, your Honors had called for the details pertaining to expenses reflected under the head 'Others' to the tune of Rs. 39,47,44,986/-.

5. In this regard, it is firstly reiterated that the seized material only contains broad category-wise details of the expenses. For the expenses reflected under others, the applicant perused the entire seized material and categorized the other expenses into the following heads on the basis of entries found in the seized materials as required by your Honors:

Nature of Expenditure	Amount (Rs.)
Staff Welfare expenses	6,31,71,470
Business Development expenses	6,37,98,177
Legal and Professional fees	6,32,67,547
Local community Welfare expenses	8,45,11,337
Workplace Welfare Expense	6,15,13,647
Office Expenses	3,73,67,112
Sundry Expenses	2,11,15,694
Total Expenses reflected under 'Others'	39,47,44,986

6. It is further submitted that the applicant right from the stage of filing the settlement application in page 27 and 28 has elucidated that the total eligible expenses of Rs.73,38,35,019/- includes expenses which were extrapolated at Rs.20,77,17,241/- as the seized material is apparently incomplete and therefore the applicant has annualized these expense for the respective years and claimed as rebate against the gross Undisclosed income offered by the applicant for AY 2013-14 to AY 2019-20, the table of which is enclosed as Annexure 1. This has also been accepted by the department as no dispute pertaining to the same has been raised throughout the settlement proceedings.

7. The year-wise head-wise break-up of the 'Other' expenses of Rs. 39,47,44,986/- as tabulated above is reflected in Annexure 2 for your perusal and records along with a sample copy of the seized material highlighting the aforesaid expenses.

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8. It is brought to your kind attention that no rebate has been claimed towards balance ineligible expenses of Rs.60,88,65,910/- which cannot be substantiated by the applicant with documentary evidences. Hence, only Rs.73,38,35,019/- of eligible expenses is claimed as deduction from gross total undisclosed income and balance is duly offered to tax as elucidated in the settlement application filed before the Hon'ble Settlement Commission.

9. The applicant hereby elucidates the basis for claiming these as eligible expenses which is given hereunder:

9.1 Allowability u/s 37 as per income tax Act. In this connection, kind attention of your Honors is drawn to Section 37 of the Act which is a residuary section for allowability of expenditure incurred wholly and exclusively for the purpose of business. Any expenditure which results in any direct or indirect benefit and growth of the business is allowable u/s 37 of the Act. Thus, in the case of the applicant, expenses incurred towards staff welfare towards advertisement and business promotion of the applicant which are eligible u/s 37 of the Act.

In this regard the applicant relies on the following decisions:

9.1.1 The Hon'ble ITAT in the case of Spice Communications Ltd. 35 SOT 78. Held that *"by incurring expenditures on advertisement and sales promotion, the assessee had not acquired any fixed capital asset, yet these expenditures were incurred for earning better profits and for facilitating the assessee's operation of providing cellular mobile services. Thus, there existed direct nexus between the advertisement and sales promotion expenses and the carrying out of the business activity of the assessee."*

9.1.2 The Madras High Court in the case of Aruna Sugars Ltd in 132 ITR 718 (MAD.) *"The these expenses were incurred for the poojas, etc., performed by the workers and that they should form part of the welfare expenses. It also pointed out that, similarly, expenses on bakshish and presentation were found to have been incurred in respect of the workers alone. Hence, the Tribunal did not find any reason for the disallowance of these claims"*

9.1.3 The Hon'ble High Court of Madras in the case of Madura Coats Ltd. 24 DTR 24 held that *"Expenditure incurred by the assessee on community assistance programme and the welfare measures undertaken in the vicinity of the manufacturing unit which also benefited its employees is allowable as business expenditure."*

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9.2 Commercial expediency - The applicant further submits that the above-mentioned expenses were required to be made for the business purposes which boosts the employees performance and growth of business. Hence, it indirectly benefits the business of the applicant. Therefore, there was commercial expediency in incurring such expenses.

9.2.1 In this regard, the applicant relies on the decision of DCIT Vs Deloitte Haskins and Sells (ITAT Ahmedabad) in ITA No. 2970/Ahd/2017 on 08-04-2021 wherein it was held that "commercial expediency" refers to such expenditure which a prudent businessman incurs for the purpose of business. Such expenditures might not have been incurred under any legal obligation, but the same are allowable as a business expenditure if it directly or may even indirectly benefit the business in form of increased turnover, better profit, growth, etc.

The Assessing Officer cannot question the reasonableness by putting himself in the arm-chair of the businessman and assume status or character of the assessee and that it is for the assessee to decide whether the expenses should be incurred in the course of his business or profession or not. Courts have also held that if the expenditure is incurred for the purposes of the business, incidental benefit to some other person would not take the expenditure outside the scope of Section 37(1) of the Act. Further, it is settled law that the commercial expediency of a businessman's decision to incur a particular expenditure cannot be tested on the touchstone of strict legal liability to incur such expenditure."

9.3 Need to incur outside banking channels: It is brought to your kind attention that the applicant operates in the industry wherein the applicant is forced to make such payments at the insistence of the concerned party, or laborers/workers who do not have bank accounts. Such incidental expenses have to be incurred in cash as a general practice followed in the industry in which the applicant operates to ensure smooth running of the business. It is submitted that these are genuine expenses.

9.4 Presumption u/s 132(4A) & 292C- The applicant submits that no proper records were maintained for the transactions incurred outside banking channel, except for broad category-wise expenses, as evident from the seized materials wherein the expenses were available only part period and incomplete. Hence, in the absence of any corroborative evidence, it is prayed that the seized materials may please be treated as evidence in support of the claim made by the applicant



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as per presumption laid down u/s 292C & 132(4A) of the Act. As held in the case of In the case of CIT v. Damac Holding (P.) Ltd. [2018] 89 taxmann.com 70/253 Taxman 123 (Delhi), In this case, evidence was found in the seized paper that the assessee had incurred expenditure for land development. It was held that the presumption u/s 132(4A) would be available to the assessee in the absence of further proof.

9.5 Only profit element to be taxed- It is mostly humbly brought to your kind attention that as per the settled law, what needs to be taxed is the profit embedded in the transactions and not the gross sum. The applicant should be allowed to claim genuine eligible expenses incurred out of the undisclosed income.

9.5.1 In this regard, the applicant relies on the decision in the case of Kishor Mohan Lal Telwala v. Asst. CIT [1999] 107 Taxman 86 (Mag.) (Ahmedabad-Trib.), wherein evidence was unearthed about on-money received on sale of flats. The Tribunal held that what could be taxed as undisclosed income was a reasonable amount of profit earned by the assessee out of on-money but not the entire on-money. Further, Hon'ble High Court of Gujarat in the case of CIT vs Samir Synthetic Mill [2010] 326 ITR 410 (Gujarat) also took a similar view and held that "*the addition was justified on account of suppression of sale consideration but only to the extent of profit.*"

10. Thus, considering the above submissions, the applicant mostly humbly prays before Your Honors to allow the claim the above eligible expenses to the tune of **Rs. 73,38,35,019/-** as a deduction in the hands of the applicant and consequently, the disclosure made by the applicant be treated as Full and True.

Expenses Turnover ratio pertaining to Transportation, Freight & Sludge claimed in Return of Income:

11. In this regard, during the course of hearing u/s.245D(4) of the Act held on 11-04-2023 in the applicant's case, your Honors had called for the expense turnover ratio pertaining to Transportation, Freight & Sludge expense claimed in Return of Income for the period covered in the settlement application vis-à-vis the subsequent years which are beyond the period of settlement. Without prejudice to the fact that the same has no bearing on the settlement proceedings, we herewith enclose the same in Annexure 3."



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6.1.5 Further submissions of the PCIT dated 28.04.2023

"1. The facts of the case is that the bogus expenses under the head 'transportation', 'freight and coolie', 'sludge handling charges' are found entered in the audited books of accounts. Enquiries made during the course of search revealed that the applicant makes payments to the transporters and contractors over and above what is required to be paid and such excess payments are immediately withdrawn in cash and given back to the CFO of the company. This is done in connivance with the transports and contractors. The unaccounted cash such generated was being used for the payments now claimed by the applicant as 'genuine business expenditure'. It is also stressed here that the details to whom such illegal cash payments now claimed as genuine business expenditure were made have not been provided by the applicant. In the circumstance the department did not have any opportunity to cross verify the same with the recipients of such cash. Even before the latest submission of the assessee these details were not provided by the assessee to the department though relief is being claimed on the same. This point was already stressed in the Rule 9 report at para 10.6 requesting the Hon'ble Board to cause to make an enquiry to obtain the complete information as to who are in receipt of cash."

"2. The assessee's submission dated 25/04/2023 provided on 27/04/2023 to this office in Annexure-1 has extrapolated an amount of Rs.20.77 crore against the actual amount as per seized material of Rs.52.61 crore. The assessee has not provided any basis or criteria for this extrapolation and being not actual payoff, is irrelevant. This is without prejudice to the department's contention that the amount of Rs.73.38 crore claimed as genuine expenditure is not allowable."

Department's contention in Annexure 1 of the Report		
Sr.no	Assessee's submission	Response to the assessee's submission
1.	Out of Gross undisclosed income of Rs.134.27 cr. the assessee has incurred genuine eligible business expenditure of Rs.73.38 cr. towards temples in the state, media, staff welfare, transportation etc. which are imperative to the running of the business AYs 201314 to 2019-20 Total Media expense - Rs.16.43 cr.	1. The assessee claims that it has "incurred genuine eligible business expenditure" of Rs. 73.38 cr. for AYs 2013-14 to 2019-20, however, no reason is given as to why then these expenses were not claimed in their regular books of accounts before the search. 2. Earlier it was submitted that the assessee was forced to make such payment at the insistence of concerned party and the break-up of such expenses cannot be provided as no records are maintained. So now on what basis it is concluded that these are expenses towards Media, Temple and Other expenses. 3. As per the assessee's own admission it has booked bogus/fictitious expenses to generate cash to make certain payments against public policy (explanation

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Department's contention in Annexure 1 of the Report		
Sr.no	Assessee's submission	Response to the assessee's submission
	Total Temple expense- Rs.17.48 cr. Total other expense- Rs.39.47 cr. Rs.73.38 cr.	1 to section 37). 4.The assessee has not substantiated with documentary evidence that it has incurred expense towards Media. Temple and 'other expenses'. The assessee has now produced a tabulated details of these expenses the material basis on which the table is made is not known hence, not genuine. 5. It is noted that there is no Media expense for AY 2013-14, 2014-15 and 2019-20. Further. during AY 2015-16 only Media expense is found in the table. 6.The assessee has not provided any details as to in how percentage of cases documentary evidence is available for the claim. 7.The assessee has admitted that no proper records were maintained for the transactions incurred outside banking channel (para 9.4). The assessee failed to give reasons as to why even Temple expenses are paid by way of cash. This clearly shows that the claim of the assessee is not genuine and has to be rejected. 8.While disputing the claim of "other expenses" of 'Rs.39.47 cr. it is noted that the table provided by the assessee includes Legal and Professional fees of Rs.6.33 cr. wherein TDS should have been made by the assessee is clearly disallowable w/s 40(a)(ia)
2.	Para 9.1 Allowability u/s 37	It is for the assessee to prove the genuineness of the expense. The basis on which the Table made is not shared by the assessee.
3.	Para 9.2 commercial expediency	Malafide intention is proved when bogus expenses are claimed without maintain any record. Issue of Commercial expediency has to be proved with documentary and other corroborative evidences which the assessee has failed to do.
4.	Para 9.3 need to incur outside banking channel	In para 9.3 the assessee admits that it is forced to make payments to party/laborer who do not have bank accounts. The assessee is Limited Company and it is expected that proper vouchers and documents to be maintained by it in support of the claim of expenditure even if it is by way of cash.
5.	Para 9.5 only profit element to be taxed	Where bogus expenses are claimed the expenditure has to be disallowed. In such cases the issue of profit element doesn't arise.
6.	Para 10 eligible expenses of Rs. 73.38 cr.	The basis on which the Table of Rs.73.38 cr. is prepared is not shared by the assessee.

6.1.6 Submissions of the Applicant dated 18.05.2023

"The above applicant is in receipt of comments of the Department on the submissions made by the applicant dated 25-04-2023 from the office of the Principal Commissioner of Income

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Tax, Central, Cochin ('PCIT') dated 28-04-2023 on 01-05-2023. In this connection, the applicant submits as under:

1. In the said report, the department has raised the following issues:
 - 1.1. The amount of Rs.73,38,35,019/- claimed as genuine expenditure is not allowable. The unaccounted cash such generated was being used for the payments now claimed by the applicant as 'genuine business expenditure'. The details to whom such illegal cash payments now claimed as genuine business expenditure were made have not been provided by the applicant.
 - 1.2. Without prejudice to the above contention, the assessee has not provided any basis or criteria for this extrapolation and being not actual payoff, is irrelevant.
2. At the outset, the applicant wishes to draw the kind attention of your Honors to the facts of the case which have been repeatedly stated by the applicant throughout the course of settlement proceedings:
 - 2.1. During the course of search proceedings, it was identified that the applicant had earned gross undisclosed income by way of inflation and recording of expenses which were not supporting by third party invoices. The same was quantified at **Rs.134,27,00,929/-**
 - 2.2. The above manner of earning the gross undisclosed income and its quantification has not been disputed by the department.
 - 2.3. Out of the aforesaid gross undisclosed income of Rs.134,27,00,929/-, the applicant has claimed rebate of the eligible expenses to the tune of **Rs.73,38,35,019/-**, which pertains to genuine business expenditure towards temples in the state, media and others comprising of staff, transportation, etc.. and are imperative to be incurred towards running of business, social welfare, staff welfare and towards advertisement and business promotion of the applicant.
 - 2.4. Thereby the applicant offered the balance sum of **Rs. 60,88,65,910/-** as its total undisclosed income (including the undisclosed income offered in the return of income filed).
 - 2.5. Thus, no rebate has been claimed towards balance ineligible expenses of Rs.60,88,65,910/- which cannot be substantiated by the applicant with documentary evidences.
3. With regard to the contention of the department in this report dated 28-04-2023 the applicant, in addition to the submissions made throughout the course of settlement proceedings, the applicant hereby submits as under:

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A. Allowability of the Expenses and proof of incurrence:

3.1. With respect to the contention of the department that *"illegal cash payments have been now claimed as genuine business expenditure"* it is submitted that the department has not considered the submissions made by the applicant right from the time of filing the settlement application, wherein the applicant has elucidated that rebate has been claimed only towards the eligible business expenses incurred out of the unaccounted income towards Temple, Media and others, which was incurred towards running of business, social welfare, staff welfare and towards advertisement and business promotion of the applicant to the tune of Rs.73,38,35,019/-. It is reiterated that no rebate has been claimed towards balance ineligible expenses of Rs.60,88,65,910/- which cannot be substantiated by the applicant with documentary evidences.

3.2. Thus, the contention of the department that *"illegal cash payments have been now claimed as genuine business expenditure"* is erroneous and contrary to the facts of the case.

3.3. It is also brought to the kind attention of your Honors that even in the sworn statements recorded during the course of search proceedings, the key managerial persons of the applicant nowhere stated that the expenses made were illegal and that they were all ineligible. It was simply stated that the expenses were made 'to parties' as reflected in the seized material. The relevant extracts of the sworn statements is as under:

Sworn statement recorded from Shri S.N. Sasidharan Kartha on 29.01.2019

"Q No. 4. It has been revealed during the course of search that large number regular cash payments are being made to various parties. The details of the same have been recovered from the office of M/s Cochin Minerals & Rutels Limited vide seized material no. CHN/EKM/S&S-22/KN/18-19/T-2/A-2 TO A-6 and also from the residence of Shri K.S. Suresh Kumar vide seized material no. CHN/EKM/S&S-22/ST/18-19/01. During the analysis of the seized material the year wise summary of such cash payments made in excess of Rs.5Lakhs per individual per instance It is revealed following amount of financial year wise cash payments have been made to various parties. Please explain.

FY 2018-19	Rs.5,46,01,630
FY 2017-18	Rs.11,99,75,000
FY 2016-17	Rs.8,57,00,000
FY 2015-16	Rs.10,64,11,000
FY 2013-14	Rs.19,13,14,512
FY 2012-13	Rs.4,01,05,500
FY 2011-12	Rs.94,00,000

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Ans. It is true that cash payments have been made to various parties as per the details maintained by Shri. K.M. Vasudevan and Shri. K. S. Suresh Kumar as seen above. These payments have been made to individuals mentioned in the records maintained by them in cash."

Sworn statement recorded from Shri. S.N.Sasidharan Kartha on 22.03.2019

"Q-3.It is seen from the response of Shri K S Sureshkumar to Q 7,8,9 of the statement recorded from u/s 132(4) of Income Tax Act on 18/02/2019.

- (a) Inflated payments are being made by cheque to vendors like Industrial Contractors and transporting, M/s Vahini Transports etc.*
- (b) Such inflated payments are received back in cash from them by Shri K S Sureshkumar. Details of such transactions have been maintained under a ledger named Suresh Kumar K S (KSS) in the Tally data maintained at corporate office of M/s CMRL.*
- (c) Such cash receipts have been utilized for making payments to politicians, police, media houses etc. Please explain.*

A-3. I have read the response of Shri K S Suresh Kumar to Q No. 7,8,9 of the above mentioned statement. The details stated by him are correct. It is true that indflated payments are being made to vendors and the same are being received back in cash by Shri K S Sureshkumar. This cash was being utilized for making payments to politicians, police, media houses, temple etc."

Sworn statement recorded from Shri S. N. Sasidharan Kartha on 22.03.2019

"Q-4. It is seen from the tally data maintained by Shri K S Suresh Kumar that a total of Rs.40,46,29,271/- has been received from vendors in cash during the period from FY 2011-12 to FY 2018-19 (till the date of search). Please explain the same?"

A-4. The amount of Rs.40,46,29,271/- is consists of inflated payments made to vendors which was received by us in cash. The same was utilized by us to make payments to politicians, police, media houses, temple etc.. We undertake to disclose the above amount as income in the name of M/s CMRL during the relevant years as additional income."



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3.4. Considering the above, it is submitted that the applicant has rightly claimed only the eligible expenses while arriving at its undisclosed income and no illegal expenses as alleged by the department has been claimed.

Proof of incurrence:

3.5. The above eligible expenses claimed are duly reflected in the seized materials, sample of which is enclosed by the applicant in page 220 to 240 of the APB-III, upon perusal of which it can evidently be seen that the same contains broad category-wise details of the expenses such as 'Temple', 'Media', and 'Others'.

3.6. In this connection, the applicant reiterates that no proper records were maintained for the transactions incurred outside banking channel, except for broad category-wise expenses, as evident from the seized materials wherein the expenses were available only part period and incomplete.

3.7. Hence, in the absence of any corroborative evidence, it is prayed that the seized materials may please be treated as evidence in support of the claim made by the applicant as per presumption laid down u/s 292C & 132(4A) of the Act. As held in the case of **In the case of CIT v. Damac Holding (P.) Ltd. [2018] 89 taxmann.com 70/253 Taxman 123 (Delhi)**. In this case, evidence was found in the seized paper that the assessee had incurred expenditure for land development. It was held that the presumption u/s 132(4A) would be available to the assessee in the absence of further proof.

3.8. It is further submitted that the department has failed to provide the basis on which it has been alleged that the eligible expenses claimed by the applicant are illegal in nature and has merely sought to disallow the same claiming that documentary evidences have not been furnished by the applicant, without appreciating that the applicant has claimed the expenses based on the seized material which is also available with the department.

3.9. Further, with respect to the contention of the department that *"It is also stressed here that the details to whom such illegal cash payments now claimed as genuine business expenditure were made have not been provided by the applicant....This point was already stressed in the Rule 9 report at para 10.6 requesting the Hon'ble Board to cause to make an enquiry to obtain the complete information as to who are in receipt of cash"*, it is submitted that the list of parties to whom payments have been made is duly reflected in the seized



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material and the department has also given its agreement with respect to the list of parties reflected for the payments incurred under the ineligible head of expenses (for which no rebate has been claimed). Thus, the contrary stance taken by the department for the eligible expenses claimed by the applicant is unjustified.

B. Basis for extrapolation:

3.10. With respect to the contention of the department that *"The assessee has not provided any basis or criteria for this extrapolation and being not actual payoff, is irrelevant"*, it is submitted that upon perusal of the seized material, it can be seen that these eligible expenses such as Temple, Media and other office/staff expenses were reflected for a part period in the seized material which is apparently incomplete and therefore the applicant has annualized these expense for the respective years and claimed as rebate against the gross Undisclosed income offered by the applicant for AY 2013-14 to AY 2019-20.

3.11. The above fact has been stated by the applicant right from the time of filing the application and the same has not been disputed by the department until this stage of the proceedings, wherein an issue has been raised in this connection for the very first time. This issue was nowhere mentioned in the Report u/s.245D(2B) dated 29-12-2020 and the Rule 9 Report dated 09-02-2022.

3.12. However, the applicant submits that the seized material contains the instances of expenses under each of the broad categories. For the AY 2015-16 & 2018-19, the seized material is available for the entire year and hence, no annualization has been done for these years. However, with respect to the balance period, the applicant submits that the seized material is available only for some months and not the entire year. The non-incurrence of the eligible expenses in certain months goes against logic as these expenses are recurring in nature and are incurred every month. Thereby the applicant has annualized these expenses and arrived at the sum of Rs 73,38,35,019/-, out of Rs.52,61,17,778/- is reflected in the seized material and the balance sum of Rs.20,77,17,241/- pertains to the extrapolated amount for the missing period.

3.13. Further, it is submitted that if a corroborated approach is taken, the source for incurrence of the above expenses, being withdrawal of cash from the bank account and inflated vendor payments, is found in full. With regard to application of funds, no undisclosed assets were found during the course of search except for the expenses which were



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reflected in the seized materials. Hence, the only plausible application of funds could be towards eligible and ineligible expenses, out of which the eligible expenses were reflected only for a part period in the seized material while the other expenses are reflected in full. Thereby, the eligible expenses were required to be annualized as rightly done by the applicant.

3.14. Further, with respect to the contention of the department in Annexure 1 as tabulated in the report, the applicant hereby reiterates its point-wise rebuttal as stated in the earlier submissions as under:

Department's contention in Annexure 1 of the Report		Applicants Remarks to the Departments Comments
Sr.no	Assessee's submission	
1.	<p>Out of Gross undisclosed income of Rs.134.27 cr. the assessee has incurred genuine eligible business expenditure of Rs.73.38 cr. towards temples in the state, media, staff welfare, transportation etc. which are imperative to the running of the business</p> <p>AYs 201314 10 2019-20</p> <p>Total Media expense - Rs.16.43 cr. Total Temple expense- Rs.17.48 cr. Total other expense- Rs.39.47 cr. Rs.73.38 cr.</p>	<p>9. The assessee claims that it has "incurred genuine eligible business expenditure" of Rs. 73.38 cr. for AYs 2013-14 to 2019-20, however, no reason is given as to why then these expenses were not claimed in their regular books of accounts before the search.</p> <p>10. Earlier it was submitted that the assessee was forced to make such payment at the insistence of concerned party and the break-up of such expenses cannot be provided as no records are maintained. So now on what basis it is concluded that these are expenses towards Media, Temple and Other expenses.</p> <p>11. As per the assessee's own admission it has booked bogus/fictitious expenses to generate cash to make certain payments against public</p>
		<p>1. As identified right from the time of search proceedings, the applicant had incurred both eligible and ineligible expenses outside books of accounts. Due to reasons beyond the control of the applicant, upon insistence of concerned party, the applicant, left with no other option had to incur the eligible expenses outside banking channels. Such incidental expenses have to be incurred in cash as a general practice followed in the industry in which the applicant operates to ensure smooth running of the business. Hence, the same did not form part of its books of accounts.</p> <p>2. Right from the course of search proceedings and throughout the settlement proceedings, the applicant has elaborately explained that the seized material reflects the entire expenses and the sample of the same is enclosed in page 220 to 240 of the APB-III, upon perusal of which it can be seen that the seized material contains the heads Media, Temple and Other which pertain to the eligible expenses claimed as a deduction by the applicant.</p> <p>3. The contention of the department that clearly evidences that the</p>

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Department's contention in Annexure 1 of the Report			Applicants Remarks to the Departments Comments
Sr.no	Assessee's submission	Response to the assessee's submission	
		<p>policy (explanation 1 to section 37).</p> <p>12. The assessee has not substantiated with documentary evidence that it has incurred expense towards Media. Temple and 'other expenses'. The assessee has now produced a tabulated details of these expenses the material basis on which the table is made is not known hence, not genuine.</p> <p>13. It is noted that there is no Media expense for AY 2013-14, 2014-15 and 2019-20. Further. during AY 2015-16 only Media expense is found in the table.</p> <p>14. The assessee has not provided any details as to in how percentage of cases documentary evidence is available for the claim.</p> <p>15. The assessee has admitted that no proper records were maintained for the transactions incurred outside banking channel (para 9.4). The assessee failed to give reasons as to why even Temple expenses are paid by way of cash. This clearly shows that the claim of the assessee is not genuine and has to be rejected.</p> <p>16. While disputing the claim of "other expenses" of 'Rs.39.47 cr. it is noted that the table provided by the assessee includes</p>	<p>applicant has stated that the only a portion of the unaccounted income generated was utilized towards ineligible expenses. As repeatedly stated by the applicant right from the time of filing the settlement application, rebate has been claimed only towards the eligible expenses such reflected under Media, Temple and Others and no rebate has been claimed towards the ineligible expenses.</p> <p>4. The Contention of the department that documentary evidence has not been furnished and the basis on which the table containing the expenses details is unknown is factually incorrect as the amounts are reflected in the seized material, the contentions of which is presumed to be true as per section 292C & 132(4A) of the Act.</p> <p>5. The department has only stated the facts of the case. It is reiterated that the applicant has only annualized the seized material based on the data available for part period in a given AY.</p> <p>6. The contention of the department is erroneous as the applicant has clearly provided the bifurcation of the amount reflected in the seized material (which is also available with the department) and the amount extrapolated, as evident from the contention of the department in this report that "The assessee's submission dated 25/04/2023 provided on 27/04/2023 to this office in Annexure-1 has extrapolated an amount of Rs.20.77 crore against the actual amount as per seized material of Rs.52.61 crore."</p> <p>7. Payments had to be made by the applicant towards temple expenses as these were imperative towards</p>

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Department's contention in Annexure 1 of the Report			Applicants Remarks to the Departments Comments
Sr.no	Assessee's submission	Response to the assessee's submission	
		Legal and Professional fees of Rs.6.33 cr. wherein TDS should have been made by the assessee is clearly disallowable w/s 40(a)(ia)	running of business, social welfare, staff welfare etc. the applicant operates in the industry wherein the applicant is forced to make such payments at the insistence of the concerned party, or laborers/workers who do not have bank accounts. Such incidental expenses have to be incurred in cash as a general practice followed in the industry in which the applicant operates to ensure smooth running of the business. 8. Since these expenses were incurred outside banking channels, and do not form a part of books of accounts, S.40(a)(ia) will not apply.
2.	Para 9.1 Allowability u/s 37	It is for the assessee to prove the genuineness of the expense. The basis on which the Table made is not shared by the assessee.	The applicant has repeatedly stated the nature of the expenses and the same is also reflected in the seized material, contents of which is presumed to be true as per Section 132(4A) & 292C. Thus, the applicant has elucidated in the detailed manner that the expenses are allowable in nature. The applicant also placed reliance on the judgments passed by the Hon'ble Madras High Court & Hon'ble ITAT in para 9.1 of its submissions dated 25-04-2023 which has not been disputed by the department. Further, the Contention of the department that the basis on which the Table was made has not been shared is erroneous as the Table was made on the basis of the seized material, which is available with the department.
3.	Para 9.2 commercial expediency	Malafide intention is proved when bogus expenses are claimed without maintain any record. Issue of Commercial expediency has to be proved with	The Contention of the department that the applicant has not explained the issue of Commercial expediency with documentary evidence is erroneous. The applicant, in the submission dated 25-04-2023 submitted that certain expenses were

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Department's contention in Annexure 1 of the Report			Applicants Remarks to the Departments Comments
Sr.no	Assessee's submission	Response to the assessee's submission	
		documentary and other corroborative evidences which the assessee has failed to do.	required to be made for business purposes as they boost the employees' performance and growth of the business, and hence, it indirectly benefits the business of the applicant. With regard to the documentary evidence, the applicant submits that the seized material comprises the documentary evidence, and the same is available with the department. The applicant also placed reliance on the judgment passed by the Hon'ble ITAT, Ahmedabad Bench in para 9.2 of its submissions dated 25-04-2023 which has not been disputed by the department.
4.	Para 9.3 need to incur outside banking channel	In para 9.3 the assessee admits that it is forced to make payments to party/laborer who do not have bank accounts. The assessee is Limited Company and it is expected that proper vouchers and documents to be maintained by it in support of the claim of expenditure even if it is by way of cash.	The department has not appreciated that these expenses have been incurred outside books of accounts, out the unaccounted income generated by the applicant and therefore no proper were maintained. The seized materials are maintained by the applicant for their internal understanding and reference.
5.	Para 9.5 only profit element to be taxed	Where bogus expenses are claimed the expenditure has to be disallowed. In such cases the issue of profit element doesn't arise.	The applicant submits that the receipts from inflation of expenses were outside banking channels, which were utilized only for eligible business expenses. Therefore, the department ought to allow the claim of the eligible expenses which have been incurred for the business of the applicant.
6.	Para 10 eligible expenses of Rs. 73.38 cr.	The basis on which the Table of Rs.73.38 cr. is prepared is not shared by the assessee.	The Contention of the department that the applicant has not shared the basis of preparation of the Table is erroneous as the basis on which the same is made is the seized material which is available with the department.

6.1.7 Decision:-

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1. Both the sides were heard. We have carefully considered the reports/submissions made by the Department and the applicant.

2. It is observed that the department has not raised any dispute pertaining to the gross undisclosed income offered by the applicant amounting to Rs.134,27,00,929/-. The primary issue raised by the department is pertaining to the claim of rebate of the eligible expenses to the tune of **Rs.73,38,35,019/-**, which pertains to business expenditure towards temples in the state, contribution towards advertising, media and others including staff welfare, transportation, etc. and are claimed by the applicant being imperative to incur towards running of business, comprising social welfare, staff welfare and towards advertisement and business promotion. Thereby the applicant offered the balance sum of **Rs.60,88,65,910/-** as its total undisclosed income (including the undisclosed income offered in the return of income filed.)

3. The PCIT vide its report dated 28-04-2023 reiterated the points stated in the Rule 9 report regarding the.

A) the allowability of the expenses of **Rs.73.38cr** claimed as eligible business expenses against the gross undisclosed income of the applicant and.

B) the basis of extrapolation of the expenses to the tune of **Rs.20.77cr** forming part of the eligible expenses.

3.1 Allowability of the expenses to the tune of Rs.73.38cr

The department had sought for the details as to whom such illegal cash payments were made which are claimed as genuine business expenditure against the gross undisclosed income of the applicant, for which the AR pointed out that the expenses claimed as rebate is towards eligible business expenses and not in the nature of the illegal payments as alleged by the department. In this regard, the AR brought to our notice that even in the sworn statements recorded during the course of search proceedings, the key managerial persons of the applicant nowhere stated that the expenses made were illegal and that they were all ineligible. Reference were made to Sworn Statement recorded from Shri S.N. Sasidharan Kartha on 29.01.2019 in question no.4 & Sworn statement recorded from Shri S.N. Sasidharan Kartha on 22.03.2019 in Question no.3 wherein it was simply stated that the expenses were made 'to parties' as reflected in the seized material.

It is seen that, as pointed out by the AR, the seized materials clearly shows the bifurcation of expenses under various heads out of which expenses under 'Temple', 'Media' and 'others' which have been claimed as genuine. Out of the above Rs.73.38 crores, **Rs.52,61,17,778/-** is

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reflected in the seized material and the balance sum of Rs.20,77,17,241/- pertains to the extrapolated amount for the missing period.

Further, during the hearing held on 11-04-2023, the applicant was required to provide details of the expenses reflected under the head 'Others' to the tune of Rs.39,47,44,986/- for which the applicant had duly provided the details of the nature of expenses vide its submissions dated 25-04-2023 as given hereunder:-

"the applicant perused the entire seized material and categorized the other expenses into the following heads on the basis of entries found in the seized materials as required by your Honors:

Nature of Expenditure	Amount(Rs.)
<i>Staff Welfare expenses</i>	6,31,71,470
<i>Business Development expenses</i>	6,37,98,177
<i>Legal and Professional fees</i>	6,32,67,547
<i>Local community Welfare expenses</i>	8,45,11,337
<i>Workplace Welfare Expenses</i>	6,15,13,647
<i>Office Expenses</i>	3,73,67,112
<i>Sundry Expenses</i>	2,11,15,694
Total Expenses reflected under 'Others'	39,47,44,986

The AR had duly furnished the details of the other expenses and no further dispute was raised by the department in this regard.

Further, regarding the allowability of expenses, the AR further referred to Section 37 of the Income Tax Act, which allows for the deduction of expenditure incurred wholly and exclusively for the purpose of business and in support of their claim cited several relevant decisions on allowability of advertisement, sales promotion, staff welfare, community assistance programs, and welfare measures which are considered allowable as business expenditure because they directly or indirectly benefited the business as given hereunder:

- The Hon'ble ITAT in the case of **Spice Communications Ltd. 35 SOT 78**. Held that "by incurring expenditures on advertisement and sales promotion, the assessee had not acquired any fixed capital assets, yet these expenditures were incurred for earning better profits and for facilitating the assessee's operation of providing cellular mobile services.

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Thus, there existed direct nexus between the advertisement and sales promotion expenses and the carrying out of the business activity of the assessee.”

- The Madras High Court in the case of **Aruna Sugars Ltd in 132 ITR 718 (MAD.)** “ The these expenses were incurred for the poojas,etc.,performed by the workers and that they should form part of the welfare expenses. It also pointed out that, similarly, expenses on bakshish and presentation were found to have been incurred in respect of the workers alone. Hence, the Tribunal did not find any reason for the disallowance of these claims”
- The Hon'ble High Court of Madras in the case of **Madura Coats Ltd. 24 DTR 24** held that “Expenditure incurred by the assessee on community assistance programme and the welfare measures undertaken in the vicinity of the manufacturing unit which also benefited its employees is allowable as business expenditure.”

The applicant relied on the aforementioned decisions which in our view are squarely applicable in the case of the applicant .Thus, it is seen that the applicant had substantiated the commercial expediency and further relied on the decision of **DCIT Vs Deloitte Haskins and Sells(ITAT Ahmedabad) in ITA No.2970/Ahd/2017 on 08-04-2021** wherein it was held that *that*“ The Assessing Officer cannot question the reasonableness by putting himself in the armchair of the businessman and assume status or character of the assessee and that it is for the assessee to decide whether the expenses should be incurred in the course of his business or profession or not. Courts have also held that if the expenditure it incurred for the purposes of the business, incidental to business, then it would not take the expenditure outside the scope of Section 37(1) of the Act.”

The AR also argued that the expenses were necessary for the business and were incurred outside banking channels due to industry practices or the absence of bank accounts for workers. The only contention of the department for contending the expenses to be illegal in nature is on the grounds that no proof has been furnished by the applicant. As

Additionally, in this regard, the AR relied on the presumption under sections 132(4A) and 293C of the Act which states that the absence of any corroborative evidence seized material is to be treated as having evidentiary value. In the case of the applicant, it is observed that the genuine expenses were clearly reflected in the seized materials to the tune of Rs.52,61,17,778/- and the balance sum of Rs.20,77,17,241/- pertains to the extrapolated amount for the missing period. Sample of which is enclosed by the applicant in page 220 to 240 of the APB-III, upon perusal of which it can evidently be seen that the same contains broad category-wise details of the expenses

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such as 'Temple', 'Media', and 'Others'. The AR made reference to the decision in the case of **CIT v. Damac Holding (P.) Ltd. [2018] 89 taxman.com 70/253 Taxman 123 (Delhi)**. Wherein evidence was found in the seized paper that the assessee had incurred expenditure for land development. It was held that the presumption u/s 132(4A) would be available to the assessee in the absence of further proof.

The AR had also made reference to the sworn statements wherein it was stated by the applicant that the expenses incurred were incidental to the business and was required to be made. The applicant contended that the undisclosed income offered to tax in the settlement application is as a result of the evidences as unearthed in the seized material and therefore the expenses that are unaccounted and reflected under various heads in the seized material should also be factored to allow for the eligible expenditure incurred in arriving at the undisclosed income.

In view of the above contention of both department & applicant, taking into consideration the provisions of the statute, we are of the opinion that the expenses are eligible in nature and hence allowable to the applicant to claim against its gross undisclosed income, subject to the quantification of the same as discussed in the ensuing paras.

It was pointed out by the department in its report dated 28-04-2023 that the Applicant has not provided any basis or criteria for the extrapolation of expenses in temple, media and others to the tune of Rs.20,77,17,271/-, against which the AR argued that the expenses Temple, Media and other office/staff expenses reflected in the seized material is apparently incomplete and therefore the applicant has annualized the same. After considering the submission of both the department and the Applicant, we are of the view that the applicant has not substantiated the extrapolation of these expenses with any evidence in support of its contentions nor provided any logical basis for the same. In the absence of any evidence for incurrence of these expenses in the seized materials, the presumptions under the provisions of Section 132(4A) & section 292C are not applicable to the applicant.

An analysis of the various subheads of the expenses claimed as eligible reveals that the expenditure claimed contains both eligible as well as ineligible expenditure. For e.g. under the subhead "Media expenses" there are expenses relating to advertisement & other related expenses which are allowable in nature. Similarly under the head "other expenses" also there are expenses in the nature of staff welfare, business development expenses, legal & professional fee, local community welfare expenses, office expenses etc. which are incurred in the ordinary course of



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business and therefore a complete disallowance is neither rational or practical in the given circumstances.

After a careful consideration of the submission made by the department & the applicant in the course of hearing as well as the written submission filed before us, it is observed that there are certain proportion of expenses under various heads which are not properly vouched and are also not directly related to the conduct of business. Keeping in view the totality of issues involved and also taking into consideration, the allowability of such expenditure claimed and also in the sprit of settlement and also to bring a quietus to the issue, we are of the considered view that an amount of 30% of the total expenses claimed as eligible of Rs. 73.38 Cr. is required to be further disallowed to arrive at the fair quantum of undisclosed income. Accordingly a sum of Rs. 22,01,50,506/- shall stand additionally disallowed and added to the UDI for the A.Ys. 2013-14 to 2019-20 on a prorata basis.

6.2. Issue of non consideration of software expenses of Rs. 1.72.00.000/-

6.2.1 Comments of the Pr.CIT under rule 9 report:-

"7.3 Non Consideration of Software Expense of Rs. 1,72,00,000: The assessee has not offered this amount in its application stating that the these are bonafide expenses and the services are received and the claim was rightly made in the profit and loss account. This contention of the assessee is not acceptable .M/s Exalogic Solutions Pvt. Ltd. is a one-person Company (OPC), having its registered office at No. 1051, 7th Main, 80ft road, Koramangala, 3rd Floor, Bangalore - 560034. The Company was incorporated in the year 2014. Smt. Veena Thaikandiyil is the Director of M/s Exalogic Solutions Pvt. Ltd. During the course of search in the Corporate Office of M/s CMRL on 25/01/2019, "a service level agreement" dated 02/03/2017 between M/s CMRL and M/s Exalogic Solutions Pvt. Ltd. was found. As per this agreement, M/s Exalogic Pvt. Ltd. is hired by M/s CMRL for the purpose of providing services in developing, maintenance and management of softwares for daily business and operation of M/s CMRL's corporate office and factory located in Edayar, Aluva. The agreement also mentions that the service provider is entitled to receive a monthly remuneration of Rs. 3 Lakh. The signatures appearing in this agreement are that of Shri P Suresh Kumar (CGM, Finance and Company secretary) on behalf of M/s CMRL and Smt. Veena Thaikandiyil (Managing Director, on behalf of M/s Exalogic Solutions Pvt. Ltd.). The said agreement was seized as page 4 to 13 of bunch of loose sheets marked as "CHN/EKM/S&S-22/KN/18-19/T-2/A-1".

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However, verifications done at the corporate office and the factory revealed that no such services are being rendered by M/s Exalogic Solutions Pvt. Ltd. Please note that as per the service agreement, M/s Exalogic solutions is to provide services of "development, maintenance and management of softwares for daily business and operation" of M/s CMRL's corporate office and factory. Whereas, it was found that the softwares used by the Company are Outlook, MS Office, Tally and Power Builder. Out of these, Power Builder is their in-house software used to maintain data related to store, purchase, production etc. Maintenance of the same is carried out by the IT team of the Company consisting of Shri Chandrasekharan N C (Manager-IT) and Smt. Anju (Sr Officer-IT). In his statement u/s 132(4) recorded at the Corporate Office on 25/01/2019, Shri Chandrasekharan clearly stated that all the IT related works are carried out by him or Smt. Anju and that they have not utilized the services of any external agency for IT related work.

Smt. Veena Thaikandiyil's name appears in yet another letter issued by M/s CMRL (letter No. 01024/CMRL/ADMN/2017/3381A dated 20/12/2016). This letter addressed to Smt. Veena states that the Company M/s CMRL is pleased to engage her as their IT and Marketing Consultant on a retainership basis with effect from 01/01/2017. She will be paid a consolidated sum of Rs. 5 Lakh per month towards remuneration for the engagement. This letter is signed by Shri Suresh Kumar P, CGM - Finance and Company secretary. Smt. Veena Thaikandiyil has signed on this letter (on 31/12/2016) as a mark of her acceptance. (This letter has been seized as page 2 - 3 of bunch of loose sheets marked as CHN/EKM/S&S-22/KN/18-19/T2/A-1.

Questions regarding services rendered by M/s Exalogic Solutions Pvt. Ltd. and Smt. Veena Thaikandiyil was put across to Shri K S Suresh Kumar, the CFO, Shri P Suresh Kumar, CGM - Finance & Company secretary and finally to Shri S N Sasidharan Kartha, the Managing Director of the Company. Their responses are reproduced below:

Statement of Shri K S Suresh Kumar, CFO u/s 132(4) on 26/01/2019.

Qn. No. 6: What are the softwares installed in your Company for day to day business activities.

Ans. For accounting, we are using Tally software. For email and other communication, Outlook is being used. For accounting stock and keeping inventory records, Power Builder is used.

Qn. No. 7: Who is in charge of maintenance of the systems.

Ans. Mr. Chandrasekharan, Manager - EDP, assisted by Mr. Harish and Smt. Anju is looking after the software related issues.

Qn. No. 8: I am showing a seized item marked CHN/EKM/S&S-22/KN/18-19/A-1 to you. Please go through this and explain page 1 to 13.



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Ans. I have gone through the pages 1 to 13. These are agreements entered by my Company with M/s Exalogic Solutions Pvt. Ltd. Page No. 11 – 13 is an agreement for developing, maintenance and management of software for daily business and operations and from page 1 to 3 is an order issued by the Company for engaging Mrs. Veena T, Bangalore as IT and Marketing consultant of our Company for a consolidated payment of Rs. 5 Lakh per month.

Qn. No. 9: What are the activities of M/s Exalogic Solutions Pvt. Ltd. and Smt. Veena T.

Ans. To the best of my knowledge, I am not aware of any service provided by M/s Exalogic Solutions and Smt. Veena T.

Statement u/s 132(4) recorded from Shri P Suresh Kumar, CGM Finance and Company secretary on 25/01/2019.

Qn. No. 13: What are the IT softwares/ programmes installed and used by this Company?

Ans. We use Tally software for accounting purpose. As far as I know, Power Builder software is used for factory and we use outlook for communication. As far as I know, these are the three softwares used in our Company.

Qn. No. 14: Who is managing the software installed in this Company and please state the terms of remuneration.

Ans. Shri N C Chandrasekhar is in-charge of software and is assisted by Mrs. Anju Rachael Kuruvila and Mr. Jaison. Mr. Harish also assists IT department for routine work. All the aforesaid individuals are employees of the Company.

Qn. No. 15: Statement recorded from Shri Chandrasekharan N C is shown to you. Please go through this and offer your comments.

Ans. I have gone through the statements of Mr. Chandrasekharan. As far as I know, his statement is correct.

Qn. No. 16: You are now shown an agreement dated 02/03/2017, in which you are a signatory. Please state the nature of service provided by M/s Exalogic Solutions Pvt. Ltd. The same is seized as CHN/EKM/S&S-22/KN/18-19/T-2/A-1.

Ans. We have appointed M/s Exalogic Solutions Pvt. Ltd. for development of software and IT related services. As far as I know I have not seen any software development made by the Company till date.

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Qn. No. 17: In the agreement seized as item CHN/EKM/S&S-22/KN/18-19/T-2/A-1 pages 3 & 2 is the acceptance letter dated 30/12/2016 to Mrs. Veena T. Please go through this and offer your comments. What are the services provided by Smt. Veena T.

Ans. The services related to marketing consultancy by Smt. Veena. As far as I know, I do not know of any services rendered by her.

Statement of Shri S N SasidharanKarthā, Managing Director of M/s CMRL u/s 132(4) on 26/01/2019.

Qn. No. 43: I am showing you seized material number CHN/EKM/S&S-22/KN/18-19/T-2/A-1 containing service level agreements with M/s Exalogic Solutions Pvt. Ltd. and M/s Veena T (engagement as IT and Marketing consultant). In this connection, it is observed from the statement recorded u/s 132(4) of the IT Act, 1961 from Shri Chandrasekharan Namboothiri, head of IT cell at M/s CMRL that no service or work or consultancy or any other form of work/ service is provided by the above mentioned vendors. Please explain the purpose of payments made to the above mentioned vendors.

Ans. I have seen the agreements. Both these vendors are the same persons. Both these vendors have not provided any work, service or any software maintenance or consultancy or any other form of service to our expectations till date. However, monthly payments are being made as per the agreements.

Perusal of Profit and Loss account of M/s CMRL for FY 2017-18 reveals that an amount of Rs. 36 Lakhs has been debited towards payments to M/s Exalogic Solutions Pvt. Ltd. (at the rate of Rs. 3 Lakhs/ Month) and an amount of Rs. 60 Lakhs has been debited towards payments to Smt. Veena T (at the rate of Rs. 5 Lakh/ Month). Both these figures are included under legal and professional charges under the broad head of Administration expenses. As explained earlier, no such services were rendered to M/s CMRL by M/s Exalogic Solutions Pvt. Ltd. or Smt. Veena T. That is to say, the claim is bogus and as such expenses claimed to the extent of Rs. 96 Lakh during the FY 2017-18 relevant to AY 2018-19 has to be disallowed. For FY 2016-17, there is a payment of Rs. 15 Lakh to Smt. Veena T (again booked under the head of legal and professional charges). During the year of search (FY 2018-19), an amount of Rs. 61 Lakh is debited towards payments to these entities, debited under the head of legal and professional charges. Out of this, Rs. 21 Lakh is the payment to M/s Exalogic Solutions Pvt. Ltd. and Rs. 40 Lakh is towards payment



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to Smt. Veena T. These payments are not allowable expenditure. Accordingly, an amount of Rs. 1,72,00,000 has been quantified towards Bogus claims under Software services and management consultancy and included in the total undisclosed income of the assessee company. The claim of the assessee that this was a bonafide expense has not been substantiated.

7.4. This claim of the assessee should also be seen in the background of other claims that they had to make payments to politicians. Ms Veena T is the daughter of a prominent politician to whom other payments have been made as per assessee's own admission. (Please see answer to qn no 7 reproduced in Para 4.2 above, where Shri Suresh Kumar gives the expansion of the initials). The assessee is concealing from the Commission the fact that she is the daughter of a political leader whose initials are explained and to whom major payments have been made. It is clear from the evidences and statements of the relevant employees and supervisors that no services were rendered by M/s Exalogic Solutions. Further the assessee himself has stated in his statements "The business of the applicant required various payments to be made outside of banking channels to ensure the smooth running of the business with the uninterrupted flow of raw materials and services." These are illegal payments in the hands of the company. M/s Exalogic has not provided any services as per the contemporaneous evidence gathered during the search. The assessee company is making payments through banking channels to persons connected with a prominent decision maker to claim it as deductible expense, by claiming to compensate a service which it has not received. As explained in the previous sub paragraphs, this payment cannot be treated as business expenditure in the hands of the Company and should be seen as part of the other payment made to political persons.

7.5. It is pointed out that in this matter the applicant has tried to conceal particulars, has not come clean with full disclosure of true particulars of his income and therefore, has approached the ITSC with unclean hands."

6.2.2 Applicant's reply under Rule 9A report:-

"1.3.1 In this connection the applicant reiterates its contention as stated in the settlement application that genuine services were received from Mrs. Veena T and M/s Exalogic Solutions PLtd. However, the department has failed to consider the retraction affidavit filed by the employees who have clarified that genuine services were received from them and *bona fide* payments were made through banking channels after deducting TDS.



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1.3.2. It is pertinent to note that the department has solely contented on the basis of surmise and suspicion that since Mrs. Veena T is daughter of politician hence, the same would pertain to ineligible payments and no services were received.

1.3.3 Further the department has not produced any concrete evidence to substantiate its contention except for the statements recorded during the search for which the employees of the applicant have filed a retraction affidavit to clarify the statements in this regard.

1.3.4 In this connection the applicant reiterates that statements made cannot be the sole basis for making additions in the hands of the applicant as elucidated in para 1.2.21 of this response.

1.3.5 It is pertinent to note that upon perusal of the statements made during the search, it is evident the employees have merely stated that they are not aware of the services being rendered by Mrs. Veena T and M/s Exalogic Solutions Pvt. Ltd which should not be interpreted as no services received from the Mrs. Veena T and M/s Exalogic Solutions Pvt. Ltd. Subsequently, Shri S N Kartha in Q.no 43 vide his sworn statement dated 25-01-2019 had clarified that "*...Both these vendors have not provided any work, services or any software maintenance or consultancy or any other form of services to our expectations till date. However monthly payments are being made as per the agreements.*". Hence, department's own interpretation of the statements made during the search and surmise that she is the daughter of a person from political party cannot form basis for concluding that services were not received and that payments were illegal payments made to political parties.

1.3.6 It is pertinent to note that M/s Exalogic Solutions Pvt. Ltd was incorporated in the year 2014 and having registered office in Bangalore. The company has been duly filing its return of Income. TDS has been deducted on the payments made to them as reflected in their form 26AS and is duly reflected in their books of accounts. Thus, there is no loss of the revenue to the department. Hence, merely based on a suspicion that the director is the daughter of a politician, the department cannot assume that the payments were illegal.

1.3.7 Hence, the applicant submits that the payments were genuine and no further addition be made in this regard."



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6.2.3 PCIT's submissions dated 31.08.2022

"4. **Software expenses of Rs.1,72,00,000.:** Verifications done at the corporate office and the factory during the search revealed that no such software support or services are being rendered by M/s Exalogic Solutions Pvt. Ltd. This fact is corroborated by the seized evidences and statements of the key persons of the applicant company. Detailed discussion in this regard is made in the rule 9 report. In the response to the rule 9 report the applicantsubmitted that the employees have filed retraction affidavit and they have clarified that genuine services were received from them and bonafide payments were made through banking channels after deducting TDS.

The statement recorded under section 132(4) has evidentiary value, as provided in the Act itself that it can be used in evidence. The person who has given the statement can retract from the same if he can establish that

- (i) the statement was given under duress, coercion or under some other adverse circumstances;
- (ii) the statement was given under misconception of facts and law;
- (iii) the statement was not correct in the view of facts or material/evidence on record; and
- (iv) such other facts, material/evidence that come to light at a later stage show that the statement was not correct.

Merely because a statement is retracted, it cannot become as involuntarily or unlawfully obtained. For any retraction to be successful in the eyes of law the assessee has to show as to how earlier recorded statements do not state the true facts or that there was coercion, inducement or threat while recording his earlier statements. The burden of proof in on the assessee.

The Hon'ble Kerala High Court in case of *CIT V O. Abdul Razak [2012] 20 taxmann.com 48 (Ker.)* held that a self-serving retraction, without anything more cannot dispel statement made under oath under section 132(4). A statement made under oath deemed and permitted to be used in evidence, by express statutory provision, has to be taken as true unless there is contra evidence to dispel such assumption.



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For any retraction to be successful in the eyes of law the assessee has to show as to how earlier recorded statements do not state the true facts which is not seen made in this case.

M/s Exalogic Solutions Pvt. Ltd. is owned by the daughter of a prominent politician holding the reins of government in Kerala. In the absence of evidence of services provided and in view of the statement during search, this should be disallowed.

6.2.4 Decision:-

For the detailed findings arrived at by the department based on various sworn statements of the persons connected with the affairs of the company, we hold that M/s Exalogic has not provided any services as per the contemporaneous evidence gathered during the search. The department has demonstrated with clinching evidence the fact that applicant has made payments through banking channels to persons connected with a prominent person and thereby claim it as a deductible expense and by claiming to compensate a service which has not been rendered or received. Therefore the payment of **Rs 1,72,00,000/-** does not qualify as business expenditure and accordingly stands disallowed as follows for the relevant Asst years mentioned in this order supra

AY 2017-18	Payment to Smt Veena T	15,00,000
AY 2018-19	Payment to software services	96,00,000
AY 2019-20	Payment to Exalogic Solution	21,00,000
AY 2019-20	Payment to Veena T	40,00,000

6.3. Issue of Undisclosed income offered for the AY 2019-20

6.3.1 Comments of the Pr.CIT under rule 9 report:-

“8. The claim of the assessee in respect of AY 2019-20 of returning net undisclosed income of Rs. 3,10,40,062 is found to be correct and is acceptable. However, for the AY 2019-20, the assessee 's claim of eligible expenses of Rs. 5,00,68,971 is not acceptable for the detailed reasons mentioned in para 5 of this report.

9. The total undisclosed income of the assessee quantified for the relevant AYs is tabulated below:

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Assessment Year	Fictitious expenses debited under the heads of transportation, Sludge handling, freight and coolie	inflated payments to vendors	Fictitious claims towards software services and management consultancy	Total Undisclosed Income determined by the Department consequent to search.
2013-14	10,56,12,820	4,01,13,680		14,57,26,500
2014-15	14,93,84,624	10,85,98,542		25,79,83,166
2015-16	17,43,95,689	5,99,72,593		23,43,68,282
2016-17	20,35,90,591	3,41,74,221		23,77,64,812
2017-18	13,12,89,001	4,11,84,353	15,00,000	17,39,73,354
2018-19	15,18,56,490	4,71,77,119	96,00,000	20,86,33,609
2019-20 (Upto the date of Search)	7,70,61,374	1,38,80,975	61,00,000	9,70,42,349
Total	99,31,90,589	33,12,20,508	1,72,00,000	1,35,54,92,072

The above amounts have to be assessed in the hands of the Company as undisclosed Income.”

6.3.2 Applicant's reply under Rule 9A report:-

“1.4.1 In this connection the applicant submits that since the departments has accepted the claim of the assessee in respect of AY 2019-20 of returning net undisclosed income of Rs.3,10,40,062/-, the applicant offers no further comment in this regard.

1.4.2 With regard to the claim of eligible expenses of Rs.5,00,68,971/-, the applicant submits that its response in para 1.2 of this response may be considered as response to this contention of the department.

1.5.1 At the outset, the applicant submits it has offered higher gross undisclosed income as compared to the quantification of undisclosed income by the department. The same is elucidated hereunder:



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Assessment Year	Undisclosed Income determined by the Department consequent to search.(page 18 of the report)	Less: alleged payments towards software services claimed by applicant as genuine (explained in para 1.2 of the response)	Total Undisclosed Income determined by the Department consequent to search.	Gross UDI offered in the Settlement Application (page 30 of the application)
	(a)	(b)	(c)= (a)-(b)	(d)
2013-14	14,57,26,500		14,57,26,500	14,58,35,400
2014-15	25,79,83,166		25,79,83,166	25,94,83,166
2015-16	23,43,68,282		23,43,68,282	23,43,68,282
2016-17	23,77,64,812		23,77,64,812	23,77,64,812
2017-18	17,39,73,354	15,00,000	17,24,73,354	17,24,73,354
2018-19	20,86,33,609	96,00,000	19,90,33,609	20,09,67,335
2019-20 (Upto the date of Search)	9,70,42,349	61,00,000	9,09,42,349	9,18,08,580
Total	1,35,54,92,072	1,72,00,000	1,33,82,92,072	1,34,27,00,929

1.5.2 Upon perusal of the above, table it is evident that the applicant has offered excess of **Rs. 44,08,857/-** (Rs. 1,34,27,00,929 – Rs. 1,33,82,92,072) which is a higher gross undisclosed income in comparison to the undisclosed income quantified by the department after reducing the payments towards software services claimed by applicant as genuine (elucidated in detail in para 1.3 of this response). Thus, this only shows the *bona fide* intentions of the applicant to come out clean before the Hon'ble Interim Board.

1.5.3 Out of the above gross undisclosed income, the applicant has offered to tax Rs.60,88,65,910/- (57,78,25,848+ 3,10,40,062) as its undisclosed income before the Hon'ble Interim Board and in its Return of Income filed u/s 139 after claiming eligible business expenses of Rs.73,38,35,019 as elucidated in para 1.2 of this response.

1.5.4 It is pertinent to note that the department has not disputed the manner of earning the undisclosed income nor its quantification based on seized materials, except for the legality of the claims (eligible expenses of ~Rs.73 cr and payments to M/s Exalogic Solutions P Ltd and Mrs. Veena T) made by the applicant which has been duly substantiated by the applicant in the aforementioned paras.”



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6.3.3 Decision:-

In view of the decision taken already in the preceding paragraphs bringing to tax enhanced undisclosed income (UDI) due to the disallowance of ineligible expenses and software expenses, no separate addition is necessitated as the claim of the applicant in respect of AY 2019-20 is accepted as correct by the department as well.

The totality of additions being made in this order accordingly works out as under :

A.Y.	Addition on A/c of inflation in Expenses (Para 6.1.7) (Rs.)	Additions on A/c of Software expenditure disallowance (Para 6.2.4) (Rs.)	Total disallowance / additions made in this order (Rs.)
2013-14	2,25,70,654/-	--	2,25,70,654/-
2014-15	4,46,76,438/-	--	4,46,76,438/-
2015-16	2,81,24,194/-	--	2,81,24,194/-
2016-17	4,08,34,061/-	--	4,08,34,061/-
2017-18	3,99,12,479/-	15,00,000/-	4,14,12,479/-
2018-19	2,90,11,988/-	96,00,000/-	3,86,11,988/-
2019-20	1,50,20,692/-	61,00,000/-	2,11,20,692/-
Total	22,01,50,506/-	1,72,00,000/-	23,73,50,506/-



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2. Shri Sathivilas Narayanan Kartha Sasidharan Kartha

7. Brief facts of case as stated by the PCIT in his Rule 9 reprt:

“1. Shri Sathivilas Narayanan Sasidharn Kartha is an Individual. He is the promoter Managing Director of M/s Cochin Minerals and Rutiles Ltd (CMRL) which is a Public Limited Company incorporated in the year 1989 in association with Kerala State Industrial Development Corporation. The Company is listed with Bombay Stock Exchange. The assessee Company, M/s CMRL, is a 100 percent Export Oriented Unit in the mineral processing sector with manufacturing, marketing and research capabilities. Its main product is Synthetic Rutile which finds application as raw material for Titanium pigment and Titanium sponge/ metal industry. A search under section 132 of the Act was carried out in the case of M/s CMRL on 25/01/2019 covering its office, factory, offices of associated concerns as well as residences of its Managing Director and key employees.

2. The residence of Shri Sathivilas Narayanan Sasidharn Kartha was searched u/s 132 of the IT ACT. During the search, gold jewellery of 6882.97 gms and gold bullion of 3426 gms pertaining to the applicant assessee and his family members were found, out of which 4878.62(net wt) of Gold jewellery and 3426 gms of bullion were seized. A sum of Rs. 2,91,86,677/- was also found and seized from the assessee's residence. During the course of search, the assessee was sought to explain the source of cash seized from his residence vide sworn statement dated 25/01/2019 (Q. No 11) and the assessee admitted the same as unaccounted cash. However, vide his retraction affidavit filed on 23/10/2020, the assessee clarified that the seized cash pertains to M/s Cochin Minerals and Rutiles Limited (CMRL) earned out of its business income. M/s CMRL itself is an applicant before the Hon'ble ITSC.

3. Admission before the ITSC: The assessee has admitted undisclosed income of Rs.1,44,00,000 for the AYS 2013-14 to 2019-20 before the ITSC. This is stated to be earned as consultancy income and commission income for deliver in mentorship services to different businesses in the state. It is further admitted that he received ad-hoc voluntary non-recurring compensation which did not form part of the Income tax return. The same is now admitted as undisclosed income. The year wise break up of admitted undisclosed income



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AY	Undisclosed Income (Rs.)
2013-14	4,00,000
2014-15	5,00,000
2015-16	10,00,000
2016-17	15,00,000
2017-18	20,00,000
2018-19	40,00,000
2019-20	50,00,000

In the application, the assessee has stated that he has utilized the undisclosed income earned by him for the purchase of gold jewellery and bullion seized during the search for the respective years. Thus, the investment admitted out of the undisclosed income in gold jewellery /bullion is to the tune of 4524.02 Gms. It is further stated in the application that this income has no nexus to the additional income offered by M/ CMRL and other entities with which he is associated with."

B. The Rule 9 and Rule 9A Reports have been considered. The following issues emerged from the above reports, which one to be adjudicated upon by this Bench:-

i. Issue of Cash Payments to various persons

8.1 Issue of Cash Payments to various persons & Penal consequences in cases of corporate fraud

8.1.1. Comments of the Pr.CIT under rule 9 report:-

"4. Findings of the search: Evidences gathered during the search in this group points to massive inflation of expenses by the company M/s CMRL in a systematic manner. The search has revealed the following elements of unaccounted transactions by the company:

- That the company, M/s CMRL has been systematically inflating its expenditure, the modus operandi of which, has been explained elaborately with the illustration of the seized materials and the sworn statements of key persons in the rule 9 report of the Company, M/s CMRL.



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- Based on the evidences gathered during the search (in the form of handwritten loose sheets as well as the sworn statements of persons involved, including the MD) there are huge cash payouts to various parties on a regular basis.
- There are huge payments (running into Crores) to various politicians, Government servants, trade union leaders, media houses, temples etc.
- These payments are invariably in cash.
- Detailed record of payments so given is maintained. Date of payment, amount paid and name of recipient are clearly given. In some cases, the name of payee is given as abbreviation (P V, O C etc.) and the expansion has also been given by Shri K S Suresh Kumar. (Day to day entries of payments are made by Shri K M Vasudevan, cashier. Occasionally we do find consolidations also and the same are prepared by Shri K S Suresh Kumar, CFO.
- Payments are made and the records are kept as per the direction of the Managing Director Shri S N Sasidharan Kartha.
- The seized material showing the particulars of payments were shown to Shri K M Vasudevan and Shri K S Suresh Kumar. Both of them identified their respective hand writings and admitted that these are records of routine cash payments made as per the direction of Shri S N Sasidharan Kartha.
- These seized materials and statement of Shri K M Vasudevan and Shri K S Suresh Kumar were shown to Shri P Suresh Kumar, the General Manager, Finance. He too admitted that these are details of cash payments made as per the direction of the Managing Director Shri S N Sasidharan Kartha.
- Finally, the seized materials as well as the statements of all the above mentioned employees were shown to Shri S N Sasidharan Kartha, the Managing Director. In his statement u/s 132(4), Shri Sasidharan Kartha admitted that these are the records of cash payments made to various parties as per his directions.

4.1. Observations of the Department: The assessee group comprising of the Company, CMRL and its promoter Managing Director, Shri S N Sasidharan Kartha were generating huge amount of unaccounted cash as evidenced by the seizure of cash, jewellery and from the Seized materials. They were making huge illegal payments to various individuals/entities like politicians, media persons, temples, Government officials etc on a routine basis. No evidence is available in the seized records to show the direct nexus of such payments to the Business. These illegal payments are made in cash and detailed records of the same were recovered during the search. Inflation of expenses are to such an extent that if all those bogus claims are added back, the Company would



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have registered substantial profits in each of the financial years under consideration (whereas, as per the returns filed, the Company has been reporting losses since assessment year 2014-15).

4.2. Penal consequences in cases of corporate fraud: If the plea of CMRL and Mr Sasidharan Kartha, that these payments are business related, it will have far reaching consequences. Can the companies incorporated under the Companies Act and functioning under different financial laws, rules and regulations, claim that they had to generate unaccounted cash to sustain their business without facing the legal consequences of the same? The question here is whether the above mentioned payouts are in violations of the provisions of The Companies Act-2013, SEBI Rules(the company being listed on BSE), Prevention of Corruption laws, etc.,. If the company's position that it has to pay to various persons to remain in business, it goes against several legal provisions restricting such payments. In such a situation the question arises whether the issue is to be investigated by the Serious Fraud Investigation office of the County. The Companies Act, 2013 provides the legal basis for various corporate governance norms that are considered essential for proper corporate operation and protecting the rights of stakeholders. Violations of such norms are defined as offences with associated penalties. If it has to legally sustain doing business, the company which is a legal entity, cannot claim illegal payments as expenses without attendant consequences.

4.3. In this group of cases, the search has brought out clear evidences indicating that the Company was indulging in inflation of expenditure over a period of several years with the consent and connivance of the promoter -Managing Director, Shri S.N. Sashidharan Kartha and the key persons of the Company like the Chief Financial Officer. Huge amounts of money have been siphoned off from the Company accounts resulting in significant loss to the shareholders/investors of the Company. Thus, actions of the promoter Managing Director, Shri S.N. Sashidharan Kartha and other Key Persons Involved are liable to be investigated under the various other laws of country viz. Companies Act -2013, SFIO Liability of Directors/Companies under the prevention of Corruption Act 1988 etc.,

4.4. Penalty under the income tax Act: As elaborated in the detailed report submitted in the case of the Company viz., CMRL Ltd there are huge cash payouts by the company with the consent and connivance of the Managing Director who is also the promoter of the Company. The purpose of such cash payouts is stated to be for the smooth running of the business. In this regard attention is invited to the provisions u/s 269SS which requires that no person shall accept any loan, deposit or specified sum of Rs. 20,000 or more other than by Account Payee Cheque or through ECS through a Bank account. Further, as per the provisions of section 269ST wef 1-04-



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2017 no person shall receive an amount of Rs. 2,00,000 or more in a day otherwise than by an account payee cheque or by ECS through a Bank account. The specific purpose for which the payments are made has not been explained by the assessee. The persons who are recipients of the above amounts will have to pay tax on the same. The recipients of these amounts in cash are liable to be investigated for violation of the above mentioned provisions and applicable penalty proceedings should be initiated against such persons. Since the PAN and other relevant data are not available in the seized materials, it is requested, that the Respected Interim Board for Settlement may direct the applicant to provide complete information including the PAN of the persons who are in receipts of cash of 20,000 and more and the purpose in order to examine the applicability of the above mentioned provisions.

4.5. Assessment of Cash Payments to various persons:

Based on the evidences gathered during the search (in the form of hand written loose sheets as well as the sworn statements of persons involved, including the MD) there are huge cash payouts to various parties on a regular basis. Summary of the evidences will sum up the illegal cash payouts as given below.

S.No.	FY	AY	Total amount
1	2012-13	2013-14	10,89,73,308
2	2013-14	2014-15	21,59,18,596
3	2014-15	2015-16	13,70,000
4	2015-16	2016-17	15,79,86,927
5	2016-17	2017-18	14,06,37,341
6	2017-18	2018-19	20,14,10,537
7	2018-19 till search	2019-20	12,43,62,364
	Total		95,06,59,073

4.6. These amounts have been paid outside the company's books. In a limited company all payments are approved by shareholders. These payments are illegal in nature and the company is prohibited in making such illegal payments. If it is indeed payment related to the business needs of the company, it should have deducted TDS treating it as commission payments and uploaded the data. It has not done that. Yet it claims it to be business expenditure. If it is its business expenditure, it should provide the full address and PAN details of the persons to whom the payments have been made as it would constitute income in the hands of those persons and need to be assessed. It will be inappropriate for any authority under the IT Act to ignore these receipts as income and leave the recipients out of tax net. If the recipients are let go without payment of taxes on income it will be contrary to the provisions of the Act and public policy.



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4.7. Since the Company cannot make illegal payments and as the Company's shareholders has not allowed it, the cash payments can only be treated as payments made by Mr Sathivilas Naryanan Kartha Sasidharan Kartha who is the promoter and Managing Director of the Company. It should also be noted that Mr Kartha in his statement admitted generating cash in his personal capacity through undisclosed business activities.

4.8. In a democratic system it is essential that money does not corrupt the political process. In order to cleanse the system of aberrations of influence of money in elections, several steps are taken by the Election Commission. There are established ways of contribution to political parties. A company does not have to make payments outside the books. The Income Tax Act provides that a Company can claim 100% deduction against the amount donated to a political party under section 80GGB. If the CMRL wanted to contribute to a political party he could have done it through his accounts and are claim deductions for the same under Section 80 GGB. The companies function under strict laws preventing them in indulging in corrupt practices. Therefore these payouts cannot be treated as genuine business expenditure of CMRL. If there are expenses brought into the books of an assessee that cannot be proved is liable to be disallowed U/S 37 of the Act. Such disallowance will not invite penal consequences under other Acts. But a claim that these expenses are made by the company for its business purposes has several legal consequences. Therefore it cannot be treated as payment made by the company for its business purposes. These payments are liable to be taxed in the individual hands of Sasidharan Kartha as unexplained expenditure U/s 69 C of the Act. It should also be noted that the payments benefit Mr Sathivilas Naryanan Kartha Sasidharan Kartha with personal friendships with decision makers. This is a personal benefit to him. It is a practice in Kerala that political parties approach households for contributions. A number of such payments to political parties have been recorded. Such payments are made by every individual in Kerala. Mr Sathivilas Naryanan Kartha Sasidharan Kartha also would have made such payment commensurate with his status. That evidences of these payments were found in the premises of the Company does not change its personal nature as Mr Kartha is operating from that premise. If it was a genuine business expenditure of the Company, Mr Sathivilas Naryanan Kartha Sasidharan Kartha would have taken the shareholders into confidence and got such payments approved. In his admission before ITSC, he has admitted earning undisclosed income. Therefore, the payments made in cash to various persons can only be treated as the personal expenditure of Mr Sathivilas Naryanan Kartha Sasidharan Kartha and be assessed as unexplained expenditure in his hand as per the provisions of the IT Act.



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5. Therefore the total unaccounted income to be assessed in the case of Shri S. N. Sasidharan Kartha, based on the evidences in the seized material and the discussion above, is as below:

AY	Admitted Undisclosed Income before the ITSC	Unexplained Expenditure u/s 69C as discussed in para 4	Total Undisclosed Income
2013-14	4,00,000	10,89,73,308	10,93,73,308
2014-15	5,00,000	21,59,18,596	21,64,18,596
2015-16	10,00,000	13,70,000	23,70,000
2016-17	15,00,000	15,79,86,927	15,94,86,927
2017-18	20,00,000	14,06,37,341	14,26,37,341
2018-19	40,00,000	20,14,10,537	20,54,10,537
2019-20	50,00,000	12,43,62,364	12,93,62,364
Total	1,44,00,000	95,06,59,073	96,50,59,073

8.1.2 Applicant's reply under Rule 9A report:-

"The department has reiterated the above contention stated in the Rule 9 report of the company M/s Cochin Minerals and Rutile Limited. In this connection, the submissions made by the applicant for the same is summarized hereunder:

1. Alleged illegal Cash Payments to various persons

- The contention of the department that illegal payments were made is purely based on the statements made by employees and applicant in response to leading questions raised by the department during the search.
- The department ought to have considered that the retraction affidavits (enclosed in APB III) were filed by the respective employees and the Managing Director (applicant) wherein it was clarified that no illegal payments were made by the applicant group.
- The term 'party' mentioned in sworn statements was erroneously interpreted as political party which albeit meant regular business vendors. The same was clarified during the post search proceedings.
- Thus, it is emphasized that the payments were made to regular vendors towards business activities which were made in cash. Since, the MD of the applicant company could not substantiate the payments made with documentary evidences, the entire cash generated for making such payments was offered to tax by the applicant company before the Hon'ble Interim Board.
- Further, sworn statements cannot form the sole basis for concluding that the payments were illegal in nature without producing any corroborative evidence, particularly



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when the applicant has withdrawn the statement vide retraction affidavit filed on 23-10-2020. The applicant relies on the decision of

- The Supreme Court in Pullangode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18
 - Kailashben Manharlal Chokshi v. CIT [2010] 174 Taxman 466 (Guj.).
 - Reference was also made to the Board's Circular in F.No. 286/2/2003-IT (Inv.) dated 10-3-2003 (Appendix 4)
- It is submitted that payments had to be made outside books of accounts as the company belongs to an industry where in it is forced to make payments in cash, upon the insistence of the recipients such as labourers who do not maintain bank accounts, only for the purpose of smooth running of business. Hence, the same were not forming part of the books of accounts of the company.
 - The department has sought to verify (PAN, Name, etc..) whether the payments made to the respective party has been offered to tax in their respective Return of Income. In this regard, the applicant submits that proper records were not maintained for the payments made as evident from seized materials.
 - However, it is pertinent to note that the sources (i.e. cash generated through cash withdrawals and inflated vendor payments)for the payments have been offered to tax by applicant company before the Hon'ble Interim Board and hence taxing the same in the hands of recipients would result in double taxation of the same Income.

Penal consequences in case of the applicant company

- As elucidated in detail in above paras, the applicant company has not made illegal payments as alleged by the department, hence the contention of the department that the company has committed serious fraud is not tenable.
- Further, cash generated by the applicant company was not siphoned off from the company. The payments were used for the purpose of business only for its smooth running.



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- There was no personal benefit derived by the directors or key managerial persons as evident during the search proceedings. These are mere allegation without any corroborative evidence for the same.
- Further, with regard to provisions of section 269SS and 269ST applicable to the recipients of the payments, it is submitted that the applicant company did not maintain proper records for the same as evident from the seized materials. However, the sources of such payments have been offered to tax by the company. Hence with regard to department's contention that "*it would constitute income in the hands of those persons and need to be assessed.*" It is submitted that the same would result in double taxation of the same Income.
- Further, the provisions of 269SS and 269ST are not attracted in the case of the applicant and it has no impact on the disclosure made by the applicant.
- The applicant company prays that since it has made true and full disclosure of Income before the Hon'ble Interim Board, the applicant group be granted full immunity from penalty and prosecution.

2. Alleged illegal payments treated as undisclosed income in the hands of Shri. S N Sasidharan Kartha

2.1. The observations of the department is summarized as under:

- a) These payments are illegal in nature and the company is prohibited in making such illegal payments.
- b) The company have could have done it through books of accounts and claim deductions for the same under section 80 GGC to claim 100% deduction.
- c) The cash payments can only be treated as payments made by Mr S N Kartha since:
 - The Company's shareholders has not allowed it, but were made as per the direction of the applicant.
 - He is the promoter and MD of company and operating from the premises where the evidence of payments was found.



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- Such payments are made by every individual in Kerala. Shri S N Kartha would have made such payment which commensurate with his status and benefit him with personal friendships with decision makers.
 - His statement admitted generating cash in his personal capacity through undisclosed business activities.
- d) Hence, the cash payments made by Mr. S N Sasidharan Karthais taxed in his hands as unexplained expenditure U/s 69C
- e) Based on hand written loose sheets as well as sworn statements, the cash payouts to various parties is quantified at Rs. 95,06,59,073 for the FY 2012-13 to 2018-19 (upto search]

In this regard the applicant submits as under:

- 2.2. At the outset, it is submitted that with regard to the contention in point a)& b) it is submitted that the applicant has elucidated in detail that the payments are not illegal payments in para 1above. However, they were not forming part of books of accounts and made outside banking channels for the reason that the applicant operates in the industry wherein the applicant is forced to make payments outside banking channels at the insistence of the concerned party, or laborers/workers who do not have bank accounts. Such incidental expenses have to be incurred outside banking channel as a general practice followed in the business to ensure smooth running of the business.
- 2.3. It is further reiterated that since the applicant was unable to substantiate the payments with supporting evidences, the sources for such payments (being the cash generated through inflated expenses and inflated vendor payments)is offered to tax in the hands of the applicant company. Hence, the same cannot be construed as income in the hands of the applicant as explained hereunder:
- 2.4. The department's contention that *"the cash payments can only be treated as payments made by Mr Sathivilas Naryanan KarthaSasidharan Kartha"* is merely based on assumptions and surmise without any logic and basis.
- 2.5. It is pertinent to note that the department has not disputed that the sources of the alleged illegal payments were out of the cash generated by the applicant company. This is evident from the rule 9 report wherein this is the only source identified for making the



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payments. Hence, going by that logic, the sources ought to be taxed only in the hands of the applicant company. However, on one hand the department has sought to tax the sources in the hands of the applicant company, while on the other hand, the application of the funds (being the payments) is taxed in the hands of the applicant. Thus, taxing the same income twice which is contrary to provisions of the Act.

- 2.6. The department should allow the benefit of telescoping especially when there is a clear nexus that the payments were also made in relation to business as elucidated in above paras and the same was also specifically admitted by the key managerial persons such as the statement of the MD (applicant) recorded on -22-03-2019 in response to question 5 stated that " *..the payments are made to enable the smooth running of the company on day to day basis...*"
- 2.7. Further, the department ought to consider the materials/ statements in to. The department has conveniently considered only part of the statement wherein it was inadvertently stated that payments were made to political parties but ignored the part wherein it was stated that the payments were towards business only and not the personal benefit of the applicant.
- 2.8. It is emphasized that there is no iota of evidence found during search or post search proceedings that the payments were made for personal benefit of the applicant, nor any other sources (apart from the sources offered to tax by the company) was identified during search for such payments so as to conclude that the same ought to be taxed in the hands of the applicant.
- 2.9. Hence, it is submitted that above contention of the department that the payments are made by the applicant to commensurate with his status and that such payments are a common practice followed in Kerala is purely based on assumptions and the same cannot be taxed in the hands of the applicant merely because it was as per his direction and he was the MD of the company.
- 2.10. It is further submitted that the department has not provided the basis of quantification of Rs.95,06,59,073/- which is sought to be taxed in the hands of the applicant to enable him to give an effective rebuttal.
- 2.11. However, the applicant submits that the sources for the entire payments reflected in the seized materials has been offered as gross undisclosed income of the applicant company



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amounting to Rs. 134cr. Hence the applicant prays that no further additions be made on the same account in the hands of the applicant.

2.12. Further, with regard to the addition sought to be made u/s 69C of the Act, it is submitted that the applicant has satisfactorily explained the sources of the payments as explained above and the same is not disputed by the department in its report. The sources as duly offered to tax as business income in the hands of the applicant company. Hence, no addition can be made in the hands of the applicant u/s 69C of the Act."

8.1.3 PCIT's submissions dated 31.08.2022

"5. Sathivilas Narayanan Sashidharan Kartha- SA No KL/KO51/2020-21/11/IT : The applicant has submitted that since the payments made outside the books of the company which were generated by inflating expense is offered to tax in the hands of the applicant company, the same cannot be construed as income in the hands of the applicant.

Since the Company cannot make illegal payments and as the Company's shareholders has not allowed it, the cash payments can only be treated as payments made by Mr. Sathivilas NaryananKarthaSasidharanKartha who is the promoter Managing Director of the Company. For the detailed discussion made in the Rule 9 report, evidence of illegal payments made should be assessed u/s 69C of the Act as unexplained expenditure in the hands of Sathivilas Narayanan Sashidharan Kartha.

The confidential data in respect of payments made in cash to various political leaders, media houses, and government servants etc. which were retrieved during the search is enclosed herewith in a closed cover separately. This data was being maintained in the form of loose sheets and the copies of the same were also provided to the applicant."

8.1.4 Decision:-

The learned CIT (DR) relied upon the Rule-9 report of the PCIT and stated that the applicant has made cash payouts as per the seized material amounting to Rs 95.06 crores. The claim of the applicant that it is business expenditure relating to the company has been contested vehemently by the department. We have carefully considered the rival submissions and the facts as brought out on record. The applicant company has already offered an undisclosed income after factoring the eligible expenses. However, on the extrapolated expenses, we have ruled on a degree of disallowance on account of certain expenses not being eligible. Also it has been pointed out by the AR that the only issue raised by the department in SN Kartha pertains to the addition



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sought to made out of the payments reflected in seized material which have already been considered while offering the undisclosed income of CMRL. Since this issue has already been discussed in detail supra and decided in the case of CMRL, no further addition is required in the case of SN Kartha. We are in agreement with the submissions made by the learned AR and seeking to tax the undisclosed income both in the hands of the company where it has been offered and again here in the hands of the individual director would not be in line with the principles of taxation. Also there has not been any clinching evidence brought on record by the department that these expenses/ payments made by Kartha are unrelated to the entries in the seized material based on which the undisclosed income has been offered in CRML. Accordingly, we are inclined to accept the UDI offered in the hands of the individual as a true and complete disclosure and settle the application made accordingly without any further additions in the hands of the individual.

9. ORDER OF SETTLEMENT

In the SOF, the Applicants has made the following prayer for settlement:-

M/s Cochin Minerals and Rutile Ltd.

1. To settle the issue of the gross receipts, expenses and net undisclosed income of the applicant for AY's 2013-14 to AY 2019-20 arising out of the materials seized/found/impounded pursuant to search proceedings u/s 132 under the IT Act, 1961 initiated on 25-01-2019 and concluded on 26-01-2019 at business premises of M/s. Cochin Minerals and Rutile Limited (applicant) at P.B. No. 73, VIII/224, Market Road, Aluva, Kerala- 683101 and its associated enterprises including the residential premises of its key employees and Managing Director Shri S. N. Sasidharan Kartha and to determine the consequential tax and interest thereon payable under the Act;
2. The applicant be granted immunity from all the penalties and prosecution under the Act;
3. The applicant be granted capitalization of undisclosed income offered before the Hon'ble Settlement Commission;
4. The applicant be granted waiver of interest as applicable under the Income-tax Act.
5. The applicant be granted such other reliefs as may be deemed fit and proper by the Hon'ble Settlement Commission having regard to the facts and nature and circumstances of the applicant's case.



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1. To settle the issue of the undisclosed income of the applicant for AY's 2013-14 to AY 2019-20 arising out of the assets seized (Gold jewellery/bullion seized) pursuant to search proceedings u/s 132 under the IT Act, 1961 initiated on 25-01-2019 and concluded on 26-01-2019 in the case of M/s. Cochin Minerals and Rutile Limited (also an applicant) including the residential premises of the applicant at Sreevalsam, IInd Shady Lane, Thottakkattukara, Aluva.
2. To determine the consequential tax and interest thereon payable under the Act;
3. The applicant be granted immunity from all the penalties and prosecution under the Act;
4. The applicant be granted capitalization of undisclosed income offered before the Hon'ble Settlement Commission;
5. The applicant be granted waiver of interest as applicable under the Income-tax Act.
6. The applicant be granted such other reliefs as may be deemed fit and proper by the Hon'ble Settlement Commission having regard to the facts and nature and circumstances of the applicant's case.

10. Settlement of Income

In view of the discussion made earlier in this order, the total income is settled as under

Computation of Income

M/s Cochin Minerals and Rutile Ltd.

A.Ys. (1)	Income as per Returns filed before the AO(Rs.) (2)	Additional Income offered in the SOF(Rs.) (3)	Additions made during Settlement proceedings (Rs.) (4)	Total Income Settled u/s 245D(4) 5(2+3+4)(Rs.)
2013-14	66,58,46,870	7,05,99,888	2,25,70,654	75,90,17,412
2014-15	(4,09,51,545)	11,05,61,705	4,46,76,438	11,42,86,598
2015-16	(30,26,14,404)	14,06,20,969	2,81,24,194	-13,38,69,241
2016-17	(20,03,28,512)	10,16,51,274	4,08,34,061	-5,78,43,177
2017-18	(8,10,23,402)	3,94,31,757	4,14,12,479	-1,79,166
2018-19	23,561,255	10,42,60,708	3,86,11,988	16,64,33,951
2019-20	17,03,25,237	1,06,99,547	2,11,20,692	20,21,45,476
Total	234,815,499	57,78,25,848	23,73,50,506	1,04,99,91,853



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A.Ys. (1)	Income as per Returns filed before the AO(Rs.) (2)	Additional Income offered in the SOF(Rs.) (3)	Additions made during Settlement proceedings (Rs.) (4)	Total Income Settled u/s 245D(4) 5(2+3+4)(Rs.)
2013-14	3,41,59,750	4,00,000	0	3,45,59,750
2014-15	42,57,780	5,00,000	0	47,57,780
2015-16	1,49,68,780	10,00,000	0	1,59,68,780
2016-17	1,72,03,700	15,00,000	0	1,87,03,700
2017-18	1,41,09,240	20,00,000	0	1,61,09,240
2018-19	1,41,21,730	40,00,000	0	1,81,21,730
2019-20	1,21,25,760	50,00,000	0	1,71,25,760
Total	11,09,46,740	1,44,00,000	0	12,53,46,740

11. Charging of Interest

Although the Applicants have prayed for waiver of interest, in view of sec. 234A read with section 245C, interest u/s 234A shall be charged for delay in filing of original return u/s 139/153A/153C as the case may be on the total income settled at u/s 245D(4) of the Act. Interest u/s 234B is also to be charged as per the amended provision of section 234B of the I.T. Act w.e.f. 01.06.2015 as per CBDT O.M. no.299/78/2015-IT (Inv.-III)/623 dated 18th April, 2016. The relevant extract of the same is reproduced as under:

"In this context, I have been directed to convey that prior to the amendment by Finance Act, 2015, in case an application was filed before the Settlement Commission under section 245C declaring an amount of income-tax, there was no specific provision in section 234B for charging interest on that additional amount.

Accordingly, an amendment was made in the said section by inserting a new sub-section (2A) in section 234B so as to provide that where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section. Further, where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under - sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and



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ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C. These amendments have come into effect from 01.06.2015.

Further, there is no ambiguity insofar as applicability of the provisions of section 234B(2A) is concerned. The amendment to the provisions of section 234B was made subsequent to judgement of the Apex Court in the case of BrijLal and Calcutta High Court in the case of GM Foods. Since the applicability of the new provision came into force from 01.06.2015, it shall be applicable to the cases pending with the ITSC as on 01.06.2015 as well."

12. **Immunity**

The Applicants have prayed for immunity from prosecution and from imposition of penalties under various provisions of the Income Tax Act. Considering the facts and circumstances of the case and the cooperation extended to the IBS during hearing, immunity is granted from prosecution and penalty imposable under the I.T. Act in relation to the issues arising from the applications and covered by this order.

Further, it is made amply clear that the immunity granted herein to the Applicants may, at any time, be withdrawn if the Commission is satisfied that the Applicants had, in the course of the settlement proceedings, concealed any particular material or had given any false evidence and thereupon the Applicants may be tried all over again for the offence with respect to which the immunity is granted or for any other offence of which the Applicants appear to have been guilty in connection with the settlement and the Applicants shall also become liable to the imposition of any penalty under the Act to which the Applicants would have been liable had such immunity not been granted.

13. **Others**

The order shall be void u/s 245D(6), if it is subsequently found that it has been obtained by fraud or misrepresentation of facts.

Sd/-
(Amrapalli Das)
Member-1

Sd/-
(Rameshwar Singh)
Member-2

Sd/-
(M. Jagdish Babu)
Member-3



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Copy of the order forwarded to:

1. M/s Cochin Minerals and Rutile Ltd., P.B. No. 73, VIII/224, Market Road, Aluva, Kerala-683101.
2. Shri Sathivilas Narayanan Kartha Sasidharan Kartha, XVIII/2, Market Road, Alwaye, Ernakulam, Kerala-683101.
3. The Pr. Commissioner of Income Tax (Central), Kochi.
4. The Director of Income Tax (Inv.), IBS - II, New Delhi.
5. The Commissioner of Income Tax (DR), IBS - II, New Delhi.
6. The Additional Director of Income Tax (Inv.), IBS-II, New Delhi.
7. Guard File.



(Parikshit Singh)
Addl. DIT(Inv.),
IBS-II, New Delhi

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