

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI. SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI. A. K. GARODIA, ACCOUNTANT MEMBER**

Appeal No. and Assessment Year	APPELLANT	RESPONDENT
ITA No. 1362/Bang/2017 2010-11	The Deputy Commissioner of Income Tax, Central Circle – 2, Mangalore.	M/s. Plama Developers Ltd., 2 nd Floor, Plama Centre, Bejai, Kapikad Road, Bejai, Mangalore. PAN : AADCP 8640 F
ITA No.1363/Bang/2017 2011-12	The Deputy Commissioner of Income Tax, Central Circle – 2, Mangalore.	M/s. Plama Developers Ltd., Mangalore. PAN : AADCP 8640 F

Revenue by : Shri. B. Venkateshwar Rao, CIT
Assessee by : Smt. Sheetal Borkar, Advocate

Date of hearing : 24/07/2018
Date of pronouncement : 28/09/2018

ORDER

Per Sunil Kumar Yadav, JM :

These appeals are preferred by the Revenue against the respective orders of the CIT(A). Grounds raised in these appeals are identical, except the one additional ground raised in appeal No. 1363/Bang/2017 with regard to disallowance of interest payment of Rs.1.09 crores. For the sake of reference, we extract the grounds raised in appeal No. 1362/Bang/2017 as under:

- 1. The order of the learned CIT(A) is opposed to Law and facts of the case.*
- 2. The CIT(A) ought to have upheld the decision of the Assessing Officer of making additions on account of cash payment to the sellers of the land to the tune of Rs. 1.55 Cores.*
- 3. The learned CIT(A) has erred in allowing the claim of the assessee without appreciating that the Assessing officer has made the additions on the basis of documents found and seized during the course of search.*

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4. *The learned CIT(A) has erred in allowing the claim of the assessee merely based on the self serving statements made by the MD of the assessee and its employees, also of the sellers.*
5. *The learned CIT(A) is erred in holding that the documents found during the course of search contradicts, whereas it was supporting the findings of the assessing officer as*
 - a. *the assessee has worked out the income tax of 150 lakhs on the cash payments in one of the documents was not for paying taxes but the extra burden on the cost of the assessee who is the developers as the reduced cost will enhance the profit margin of the assessee.*
 - b. *the cost for the assessee works out to 22.30 Crores as it has to pay 19.30 Crores to sellers of the land and has to repay the advance of 7. 3 Crores given M/s Somayaji Holdings for purchase of the same piece of land before the assessee came into buy the land.*
6. *The learned CIT(A) has erred in holding that the assessing officer has not proved that the amounts of Rs. 5 Crores supposedly paid in cash withdrawn from any bank accounts. Such a finding was not needed as the case of the assessing officer is that the assessee met the said payments out of unaccounted income and there were no cash balances available in the books for the assessee to make the said payments in cash on those dates mentioned in the seized documents and details available in email correspondences.*
7. *The learned CIT(A) has erred in not appreciating the fact in the hard disk contains soft copy of the books of account and other details whirr; proves that there is cash payment of E 5,00,00,000/-.*
In the light of contents given below:
 - *"To be paid in due course (Cash payment not to be shown)*
 - *"Rs. 500 lacs will be paid in cash to the land owners. Hence this cannot be shown in the cash outflow. In the actual supplementary (which is yet to be registered this amount be excluded and only Rs.1730 lacs will be shown."*
8. *The CIT(A) is erred in not appreciating the fact that from the data it was found that the same was written in digital format on 18.03.2010. This was earlier to completion of Previous year relevant to assessment year 2010-11 and much earlier to assessment year 2011-12. Since the period gets spread over to two assessment years the assessing officer has rightly assessed the undisclosed payment for two assessment years. The assessee's argument that the same is shown as payable in due course will not hold good as the cash payments have been in the subsequent period as found from other documents which were written subsequent to digital data.*

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9. *For these and such other grounds it is urged that the order of the learned CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.*
10. *The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.*

2. Though various grounds are raised in these appeals but they all relate to one common ground with regard to deletion of addition of Rs. 5 crores, part of which was added in assessment year 2010-11 and 2011-12. The facts in brief borne out from the record are that search and seizure operation was conducted on the premises of the assessee company on 09.01.2013. During the course of search proceedings, certain materials were seized. During the course of assessment proceedings, the seized materials were examined by the AO and he arrived at a conclusion that assessee has made the payment in cash of Rs.1.55 crores in assessment year 2010-11 and Rs.3.45 crores in assessment year 2011-12 to the land owners in respect of Project "Plama Heights". While completing the assessment, the AO has observed that assessee company has undertaken a prestigious project by name "Plama Heights" under joint development agreement with the land owners M/s. T. V. Aleyas Engineers Pvt. Ltd., Bangalore, Shri. Anjannappa and others and Shri. Munikrishna and others. On the seized material, the AO has observed that unaccounted cash was paid by the appellant on various dates to the land owners. Before the AO, assessee company has admitted the payment of Rs.22,30,00,000/- to M/s. T. V. Aleyas Engineers Pvt. Ltd., and M/s. Somoyaji Estate Ltd., for getting the land. Though there was a proposal to pay Rs. 17,30,00,000/- by cheque and balance of Rs.5 crores by cash, but ultimately the entire payment was made by cheque and nothing was paid in cash. The AO, having relied upon the communications by emails, noting and other records, came to the conclusion that assessee company has made payment of Rs.5 crores in cash and he accordingly

brought it to tax in two assessment years viz., in assessment year 2010-11 - Rs.1,55,00,000/- and in assessment year 2011-12 - Rs. 3,45,00,000/-.

3. Assessee preferred an appeal before the CIT(A) and placed relevant documents including confirmation from M/s. T. V. Aleyas Engineers Pvt. Ltd., towards receipt of Rs. 19.3 crore from appellant dated 31.03.2014 and also the agreement between M/s. Somayaji and the assessee and the statements on oath given by Mr. PMA Razak and M/s. T. V. Aleyas and guidance value of the property. Besides, detailed submissions were also filed before the CIT(A) in which attention was invited to the statement of Mr. PMA Razak, Managing Director of the company with the submission that during the course of statement, it was categorically stated that the documents are only some estimates and if there is any variation in the income to be returned, he will do so while filing the returns of income. The CIT(A) has called the remand report on the submissions made by the assessee and thereafter examined the seized material on which certain entries were found in the light of assessee's contentions and he finally came to the conclusion that loose sheets on the basis of which addition was made, contains actual entries of payment made by the assessee to M/s. T. V. Aleyas which go to show that actual payment made by the assessee to M/s. T. V. Aleyas and M/s. Somayaji is Rs.22.05 crores. He further observed that loose sheets found or downloaded from the hard disk during the search proceedings cannot be accepted as the evidence for the reasons that the cheque entries in the loose sheets were not matching with the actual cheque entries reflecting in the bank statements. Therefore, the cash entries specified therein cannot be accepted unless it is established that there is a link between such loose sheets and the books of accounts. Having made the detailed analysis of the evidences filed before him, the CIT(A) finally concluded that total payment actually made by the assessee to M/s. T. V. Aleyas is Rs.22.05 crores which is close to maximum sale consideration shown in the agreement at Rs.22.3

crores and the CIT(A) accordingly held that there was no payment in cash of Rs.5 crores by the assessee to the sellers and he deleted the additions of Rs.1.55 cores in assessment year 2010-11 and Rs.3.45 crores in assessment year 2011-12. The relevant observation of the CIT(A) is extracted hereunder for the sake of reference:

“4. I have gone through the assessment order, the submissions made by the AR of the appellant, the remand report submitted by the AO and the submissions of the AR on the remand report. This case involves multiplicity of agreements between the appellant and the owners of land which was taken by the appellant for joint development. I have perused all the agreements which were submitted in a paper book, some of which were found during the course of search in the premises of the appellant. The initial JDA entered by the appellant was way back in 05.05.2006 and thereafter, the supplementary agreements were entered into subsequently over a period of almost 5 years till 31.03.2011 and then came the confirmation deed dated 30.06.2011. There are multiple agreements between the parties for the reason that the project approvals could not materialize as originally planned and the appellant could not presumably pay the consideration as originally agreed which resulted in variation of the amount of consideration. This is quite evident from the agreements between the parties for instance, in the first agreement dated 05.05.2006, the total consideration mentioned is only Rs.4.7. Thereafter, in agreement dated nil but the year mentioned as 2008, the consideration is Rs.22.3 crores and subsequently, in the confirmation deed dated 30.06.2011, the consideration stated is Rs.19.3 crores.

4.1. Main contention of the appellant is that the loose papers found during the course of search are mere estimates and are not the noting of actual transactions which were effected' between the parties. Further, it is submitted that even in sworn statements during search/survey the parties to JDA have stated that the noting on the loose sheets are estimates prepared for preparing project reports. The AR also, pointed out about certain issues on the loose sheets such as payment of income tax on transaction of Rs.5 crore and difference of Rs.95 lakhs which would not find mention on papers having actual transactions. Moreover, some papers have a mention that Rs.500 lakhs is payable in due course and in some papers it is mentioned as the amount is Raid but no other details regarding availability or source of cash and to whom and where the alleged payment of Rs.5 crore is made. AR also pointed that sworn statements of, employees of the appellant, who were alleged to have paid cash to M/s TVAEP, were recorded but the employees too did not confirm that they ever made any cash payment to M/s TVAEP. Thus, it was submitted that apart from the loose papers no other supporting documents were found during search/ survey to support / corroborate the AO's findings. As a

result of which, it was submitted that the addition made by the AO are on the basis of conjectures and surmises by placing reliance on loose sheets which do not have any evidentiary value in absence of any supporting documents.

4.2 In the background of these submissions and the agreements produced in the paper book, I have examined the bank statements of the appellant with reference to payments made to the land owners to link the transactions in the bank account with the agreements/confirmation deed. The AO has purely gone on the loose papers found during the course of search which are made part of the assessment order and cash payments are added on the basis of the said loose papers. Page no 4 of the assessment order contains a loose sheet in which certain cheque as well as cash transactions are stated. The cheque transactions are available on the bank statements. The authenticity of the loose papers can be verified by comparing the cheque transactions written thereon with the bank statements. On verification of the loose sheets, it is found that the data on the loose sheets relating to cheque transactions do not match with the data in the bank statements. Thus when the data of cheque transactions is not matching with bank statements, the authenticity of cash transactions mentioned on the loose sheet becomes doubtful. I have explained in detail with the help of a table in Para 4.11 below as to how the figures on the loose sheet are not matching with the actual transactions reflected in the bank statements.

*4.3 Page No. 5 of the assessment order is another loose sheet which contains, according to the AO the payments made by the employees of the appellant co., allegedly by cash. If the said loose paper is analyzed, there are two sets of payments by the employees having about 9 transactions totaling to Rs.3,05,00,000/-. With reference to this loose sheet, the employees of the appellant co. Mr Arun Nayak and Mr Pradeep were examined during the search/ assessment proceedings and they did not accept that they ever made any cash payment to the landowners. The AO even during the remand proceedings could not prove that the cash was withdrawn from the bank account by the appellant for such alleged payments to the land owners. The AO also did not confirm that the appellant had any other source to make the payment in cash. Further, the transactions relating to Mr Arun Nayak totalling to Rs.1,55,00,000/- are dated 8/1/2010 to 15/1/2010, whereas, loose sheet reproduced by the AO on page 9 of the assessment order which is created on 18/3/2010 states that **Rs.500 Lakhs is to be paid in due course**. Moreover, the loose sheet also mentions of payment made to Anjanappa Rs.1,00,00,000/- and difference of Rs.95,00,000/-. The appellant as per the JDA as well as the confirmation deed is not required to pay any amount to Mr Anjanappa. To verify the details, the AR was asked to produce the details of return/ assessment in the case of Mr Anjanappa. The AR of the appellant produced the copy of the assessment order of Mr Anjanappa for AY 2009-10 dated 31.3.2015 completed by ITO 6(3)(1), Bangalore ul.s143(3) rws 147, wherein the sale consideration taken by the AO is*

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Rs.30,00,000/-, which is received by Mr Anjanappa from M/s. T V Aleyas Engineers Pvt Ltd. Moreover, the AR is right in pointing that if the document is authentic it will not reflect any amount as " difference".

4.4. Page No 7 of the assessment order is a hand written loose sheet with details of payment made to Somayaji and Aleyas. According to the AO, the third transaction in the paper which is written as 'CS' is cash which is paid to M/s T.V. Aleyas Engineers Pvt. Ltd. According to the AO, the first two transactions on the paper i.e. payment to M/s Somayaji and M/s. Aleyas are by cheque. To verify its authenticity, I have examined the actual payment schedule done by the appellant to M/s Somayaji and M/s T.V. Aleyas. The payment to M/s. Somayaji is actually made on following dates.

<i>02.05.2006</i>	<i>Rs. 30,00,000/-</i>
<i>10.05.2006</i>	<i>Rs.10,00,000/-</i>
<i>11.05.2006</i>	<i>Rs.10,00,000/-</i>
<i>30.03.2012</i>	<i>Rs.2,00,00,000/-</i>
<i>03.12.2012</i>	<i>Rs.50,00,000/-</i>
<i>Total</i>	<i>Rs.3,00,00,000/-</i>

4.5. From the above table, it is clear that the payment to M/s Somayaji of Rs.3.00 crore is completed only on 03.12.2012 but whereas the payments to M/s T.V. Aleyas are made on following dates.

<i>26.07.2006</i>	<i>Rs.50,00,000/-</i>
<i>14.12.2006</i>	<i>Rs.80,00,000/-</i>
<i>13.06.2008</i>	<i>Rs.50,00,000/-</i>
<i>08.07.2008</i>	<i>Rs.1,00,00,000/-</i>
<i>06.12.2010</i>	<i>Rs.50,00,000/-</i>
<i>10.02.2011</i>	<i>Rs.1,00,00,000/-</i>
<i>30.03.2011</i>	<i>Rs.9,30,00,000/-</i>
<i>18.05.2011</i>	<i>Rs.1,00,00,000/-</i>
<i>16.09.2011</i>	<i>Rs.25,00,000/-</i>
<i>12.10.2011</i>	<i>Rs.25,00,000/-</i>
<i>11.07.2012</i>	<i>Rs.40,00,000/-</i>
<i>Total</i>	<i>Rs.15,50,00,000/-</i>

4.6. Thus, as on 03.12.2012, when the payment of Rs.3.00 crore was made to M/s Somayaji, as on that date the actual payment made to M/s T.V. Aleyas is Rs.15.5 crores which does not match with the paper found. Further, an amount of 5 written as CS does not specify as to whether the cash is paid or payable etc. It also does not bear any date for any of the transactions. When the cheque payments on the loose sheet are not matching with the actual payment figures, it is difficult to accept that CS means cash paid by the appellant as held by the AO.

4.7. The next loose sheet is on page 9 of the assessment order. As per the AO, this is an email download, from the hard disc which was seized vide no. A/PDL/1 to 4 dated 09.01.2013 and vide no. A/PDL/1/10 to 12 dated 22.01.2013. The said email, was created in the computer/laptop on 18.03.2010. According to the email, Rs.530 lakhs is claimed to have been already paid as on the date of creation of the document i.e. 18.03.2010. However, as per the actual payment schedule verified from the bank account shows that the appellant has paid Rs.50,00,000/- to M/s Somayaji and Rs.2,80,00,000/- to M/s T.V. Aleyas as on 18.03.2010 totaling to Rs.3,30,00,000/- and not Rs.5.3 crores or Rs.5.8 crores as appearing in the email. Further in the said email, though it is stating about Rs.500 lakhs as cash payment but it says that the same be paid in due course. Normally, in transactions of sale of immovable property or JDA, the business practice is to pay the cash component before or at the time of signing of the agreement, as after the agreement is signed there is a possibility that the purchaser may refuse to pay the cash component. Considering this aspect, it is difficult to believe that till 2010 the appellant has not paid the cash component when the first JDA was signed on 05.05.2006 and the appellant has paid Rs.3,30,00,000/- to the land owner till 18.03.2010.

4.8. Page 11 of the assessment order is an email sent by Mr. Pradeep Kumar Shenoy to Mr. Vijay Ajgaonkar. In the said email, he is confirming payment of Rs.430 lakhs as on 17.03.2010. However, as per the actual payment schedule, the actual payment made by the appellant to M/s Aleyas is Rs.4,00,00,000/- till 17.03.2010. Further, he is saying in the email that Rs.5,00,00,000/- is to be paid in cash out of total consideration of Rs.2230 lakhs. Thus, according to Mr. Pradeep Kumar Shenoy, Rs.5,00,00,000/- to be paid in cash is actually not paid as on 17.03.2010. Now, the contents of this email if compared with loose sheet appearing on page 5 of assessment order, in which Rs.1,55,00,000/- is paid by Mr. Arun Naik from 08.01.2010 to 15.01.2010, this aspect is not matching with the contents of the email sent on 17.03.2010.

4.9. In the submissions made the AR of the appellant had taken an argument that loose sheet at page 4 of the assessment order contains an entry towards payment of income tax on cash payment of Rs.150 lakhs and whether this

income tax has been paid by the appellant to validate the payment of Rs.5,00,00,000/- in cash. In remand report, the AO submits that the loose sheet in question is a sheet prepared to workout the cost of land to the appellant. He further clarifies that the appellant has mentioned income tax due of Rs.150 lakhs as an additional burden on the appellant as the amount of Rs.5,00,00,000/- would not be reflected in the books of the appellant and as a consequence of which the cost of land would get reduced in the books by Rs.5 crore and profitability of the appellant increase by Rs.5 crore. This interpretation of the AO goes to show that appellant would withdraw the cash of Rs.5 crore from his bank and pay the same to the owners of the land. However, the AO has not been able to prove that any such amount was withdrawn in cash by the appellant. The bank statements produced before me for the relevant period do not show any cash withdrawals to the tune of Rs.5 crores or any such higher amount.

4.10. In the remand report dated 27.10.2016, the AO on page 9 confirms that DDIT(Inv.), Mangalore has recorded the sworn statements of Mr. Arun Nayak u/s. 132(4) and Mr. Pradeep Shenoy u/s. 131 and they have not stated anything adverse against the appellant and hence, their statements were not used by the AO in the scrutiny assessments. Accordingly, opportunity of cross examination of these two persons was not given to the appellant.

4.11. In para 4, on page 15 of the remand report, the AO has stated that Rs.22.3 crores is the total sale consideration paid by the appellant to M/s TVAEP. Out of the said amount, Rs.3 crores were paid to M/s Somayaji Holdings Pvt. Ltd. and hence, Rs.19.3 crores is brought to tax as the sale proceeds of land transferred by TVAEP to the appellant. In the said para, the bifurcation given by the AO is that Rs.17.3 crores is the consideration paid by cheques and Rs.5 crores is paid by cash. In para 4.5 on page 17. the AO further states that Mr. PMA Razak, the Managing Director of the appellant has submitted in his statement that Rs.19.3 crore is paid to TVAEP and Rs.2.7 crores paid to M/s Somayaji Holdings Pvt. Ltd. which makes the total payment for the land at Rs.22 crore. Accordingly, the AO justifies on the basis of confirmation deed dated 30.06.2011 for taxing Rs.19.3 crores in the hands of TVAEP and determining the total sale consideration at Rs.22.3 crores.

4.12. For the sake of clarity, the entire payment schedule with dates on the cheques and the dates of debit in the bank account are given below.

**M/s PLAMA Developers Ltd.
M/s T.V. Aleyas Engineers Pvt. Ltd. Payment Statement**

Sl. No	Date	Date of clearing of cheques	Name of the Bank	Ch. No.	Amount
1	26/7/2006	26/7/2006	Axis Bank Ltd.: Bangalore	094204	50,00,000.00
2	8/12/2006	14/12/2006	Axis Bank Ltd.: Bangalore	094282	80,00,000.00
3	12/6/2008	13/6/2008	Axis Bank Ltd.: Mangalore	237436	50,00,000.00
4	8/7/2008	8/7/2008	Axis Bank Ltd.: Mangalore	028756	1,00,00,000.00
5	6/1/2010	18/1/2010	Axis Bank Ltd.: Mangalore	279222	1,00,00,000.00
6	4/12/2010	6/12/2010	Axis Bank Ltd.: Bangalore	652709	25,00,000.00
7	4/12/2010	6/12/2010	Axis Bank Ltd.: Bangalore	652710	25,00,000.00
8	9/2/2011	10/2/2011	Axis Bank Ltd.: Bangalore	683908	25,00,000.00
9	9/2/2011	10/2/2011	Axis Bank Ltd.: Bangalore	683909	25,00,000.00
10	9/2/2011	10/2/2011	Axis Bank Ltd.: Bangalore	683910	25,00,000.00
11	9/2/2011	10/2/2011	Axis Bank Ltd.: Bangalore	683911	25,00,000.00
12	30/3/2011	30/03/2011	Axis Bank Ltd.: Bangalore	724016	9,30,00,000.00
13	15/5/2011	18/5/2011	Axis Bank Ltd.: Bangalore	724010	1,00,00,000.00
14	16/9/2011	16/9/2011	Axis Bank Ltd.: Bangalore	782487	25,00,000.00
15	10/10/2011	12/10/2011	Axis Bank Ltd.: Bangalore	782488	25,00,000.00
16	9/12/2011	10/12/2011	Axis Bank Ltd.: Thrissur	006701	5,00,000.00
17	9/12/2011	26/12/2011	Axis Bank Ltd.: Thrissur	006702	5,00,000.00
18	11/7/2012	11/7/2012	Axis Bank Ltd.: Bangalore	635964	20,00,000.00
19	11/7/2012	11/7/2012	Axis Bank Ltd.: Bangalore	635965	20,00,000.00
TOTAL					16,60,00,000.00
Paid by Somayaji Holdings Pvt. Ltd.				Annexure I	3,00,00,000.00
Interest paid by Soma y4 Holdin.s Pvt. Ltd.				Annexure,	2,75,00,000.00
Grand Total					22,35,00,000.00

ANNEXURE I

M/s Somayaji Holding Pvt. Ltd. Payment Statement

Sl.No.	Date	Date of clearing of cheques	Bank Name	Ch. No.	Amount
1	2/5/2006	Not available	ABN AMRO Bank, Mangalore	102308	30,00,000.00
2	5/5/2006	Not available	ABN AMRO Bank, Mangalore	102313	10,00,000.00
3	9/5/2006	Not available	ABN AMR() Bank, Mangalore	102312	10,00,000.00
4	27/3/2012	30/3/2012	SBI Commercial Branch	828250	2,00,00,000.00
5	30/11/2012	3/12/2012	SBI Commercial Branch	028835	50,00,000.00
TOTAL					3,00,00,000.00

Annexure II
Interest paid by Somayaji Holdings Pvt. Ltd.

Sl.No.	Date	Bank Name	Ch. No.	Amount
1	31/12/2012	SBI Commercial Branch	028830	41,25,000.00
2	31/12/2012	TDS on Interest		4,58,333.00
3	31/1/2013	SBI Commercial Branch	028831	41,25,000.00
4	31/1/2013	TDS on Interest		4,58,333.00
5	28/2/2013	SBI Commercial Branch	028832	41,25,000.00
6	28/2/2013	TDS on Interest		4,58,333.00
7	31/3/2013	SBI Commercial Branch	028833	41,25,000.00
8	31/3/2013	TDS on Interest		4,58,333.00
9	30/4/2013	SBI Commercial Branch	028834	41,25,000.00
10	30/4/2013	TDS on Interest		4,58,333.00
11	31/5/2013	SBI Commercial Branch	028839	41,25,000.00
12	31/5/2013	TDS on Interest		4,58,333.00
TOTAL ROUNDED OFF TO				2,75,00,000.00

4.13. From the above table, it is clear that the appellant paid Rs.16.60 crores to TVAEPPL 'in 19 transactions from 26.07.2006 to 11.07.2012. Similarly, the appellant paid Rs.3 crores to M/s Somayaji Holdings Pvt. Ltd. in 5 transactions from 02.05.2006 to 30.11.2012 and further paid Rs.2.75 crore in 6 transactions starting from 31.12.2012 to 31.05.2013. Thus, the total payment made towards the JDA between the appellant and TVAEPPL for land is Rs.22.35 crores. All these payments are made by cheques and the debit of the cheques was verified in the bank statements of the appellant. During appellate proceedings, the AR of the appellant submitted that though Rs.22.3.5 crores has been paid to TVAEPPL, the actual payment made for the JDA is only Rs.22.05 crore as Rs.30 lakhs excess paid by the appellant to TVAEPPL has been shown receivable in the books of the appellant and payable in the books of TVAEPPL.

4.14. Thus, from the above analysis, it is quite clear that the total consideration paid by the appellant to and on behalf of TVAEPPL (including the payment made to M/s Somayaji Holdings Pvt. Ltd. of Rs.3 crore plus interest of Rs.2.75 crore) is Rs.22.05 crore. In case, if it is presumed that Rs.5 crores were paid in cash in addition to the payments made in cheques, the cost of the land would go up to Rs.27.05 crore. This figure is not found in any of the argeements found during the course of search or on the loose sheets as well. The contention of the AO that the total consideration was Rs.22.3 crore which is evident from a supplementary

JDA entered in 2008, is the highest figure of consideration found in the seized material or loose papers which includes the cash of Rs.5 Crore.

4.15 From the above analysis of the agreements entered into between the parties, the loose sheets on the basis of which addition was made and the actual entries of payments made by the appellant to TVAEPL go to show that the actual payment made by the appellant to TVAEPL and M/s Somayaji is Rs.22.05 crore. I have already analyzed in the earlier part of this order that the loose sheets found or downloaded from the hard disc during the search proceedings cannot be accepted as an evidence for the reason that the cheque entries on those loose sheets were not matching with the actual cheque entries reflected in the bank statements and therefore, the cash entries specified therein cannot be accepted unless it is established that there is a link between such loose sheets and other books of accounts or bank statements etc. Only the loose sheets cannot be considered alone as conclusive evidence. The appellant and his employees during the statements recorded u/s. 132(4) and 131 have stated that the figures on the loose sheets were merely the estimates and no such cash payment was actually made. In spite of these facts, the AO concluded that the loose sheets conclusively proved that the payment of Rs.5 crore was made by the appellant to the vendor. The AO cannot draw inference on the basis of suspicion, conjectures or surmise. Suspicion however, strong cannot substitute the material evidence to support the finding of the assessing authority. This view finds support of the judgment in the case of Gyankumar Agarwal Vs ACIT, decided by ITAT, Hyderabad 'B' Bench and reported in 30 Taxmann.com 114.

4.16. Further, decisions of Hon'ble High Court of Delhi in the case of CIT Vs Anil Bhalla 322 ITR 191 and CIT Vs Dinesh Jain (HUF) 211 Taxman 23, CIT Vs Jaipal Agarwal 212 Taxman 1, it has been held that the addition made by the AO based on the loose papers is not a conclusive evidence and therefore, the same is not sufficient for making the additions. Such documents or loose papers in absence of any other material to show that the assessee has concealed his income or made investment in undisclosed assets etc cannot be considered as conclusive evidence for making addition. Such loose sheets need to be corroborated with independent evidence.

4.17. In view of the above analysis and finding of facts, I hold that the total payment actually made by the appellant to TVAEPL is Rs.22.05 crore which is evident from the details produced in para 4.15 above. As the maximum sale consideration shown in the series of agreements is Rs.22.3 crore, the actual payment made of Rs.22.05 comes close to the said figure of s.22. crore as per the agreement entered in 2008. Therefore, saying that the appellant paid Rs.5 crore in addition to Rs.22.05 crore which takes the total consideration to Rs.27.05 crore would not be correct from the facts and circumstances of

appellant's case supported by the evidences found during the course of search. Therefore, 'addition of Rs.5 crore as payment in cash from undisclosed sources in the hands of the appellant for A.Y. 2010-11 and 2011-12 cannot be sustained. Accordingly, the addition made by the AO for the assessment year in appeal amounting to Rs.1,55,00,000/- is hereby deleted. Ground (a) and (b) are allowed."

4. Aggrieved with the order of the CIT(A), the Revenue is in appeal before the Tribunal and placed the heavy reliance upon the assessment order. Whereas, the learned Counsel for the assessee has invited our attention to the seized materials and the entries found therein and the order of the CIT(A) in which he has made a detailed analysis with regard to the payment made through cheques etc. He has also invited our attention to the statements recorded by the AO with the submission that no where it was admitted by the assessee that cash payment was ever made. At the first instance it was stated that these entries are pure estimates and not regular payments. The learned Counsel for the assessee further contended that the seized materials contains the payment made through cheque as well as cash. But the cheque entries found in the seized material do not co-relate with the actual payments made through cheque. Therefore, the seized material cannot be relied on for making addition on cash.

5. Having carefully examined the orders of authorities below in the light of rival submissions, we find that during the course of search, certain seized materials were found. On its perusal, the AO has drawn inference that the cash of Rs. 5 crore was paid by the assessee to the sellers of the land for developing the project. The copy of the seized material is placed on record at page Nos. 50 to 54 of the compilation. At document Annexure 1, though there are certain entries with regard to payments made through cheque as well as in cash, but these entries do not co-relate with the actual payments made through cheque. In the absence of any co-relation, it is very difficult to hold that the entries found in document Annexure 1 appearing at page No. 52 is correct and the payments in cash were made by the assessee to the seller. The

AO has placed a heavy reliance upon Annexure 3 in which the reference of word Cs against the figure 5 was made but this word cannot be interpreted to the payment of Rs. 5 crore to the seller. We have also carefully examined Annexure 4 in which it has been mentioned that Rs. 5 crore is to be paid in due course. Therefore, in different seized material different narrations are there. These seized materials does not contain the entries of cash payment. Rather it contains the various payments along with dates. The CIT(A) has compared these dates of payments along with actual date of payment through cheque etc., and he found that the entries found in the seized material do not co-relate with the actual payments recorded in the books of accounts. Moreover, the total payment according to the seized material is Rs. 22.3 crores against which assessee has explained the total payment through cheque was made at 22.05 crores with regard to which CIT(A) has observed that this figure comes closer to the figure shown in the seized material at Rs. 22.3 Crores.

6. During the course of hearing, the learned DR could not explain as to how the entries in seized material can be taken into account for making an addition on account of cash payment of Rs. 5 Crores to the seller in the light of the fact that the entries found in the seized material do not co-relate with the payments recorded in the books of accounts.

7. We have carefully examined the orders of CIT(A) and we find that CIT(A) has made detailed analysis of the entries found in the seized material and the entries recorded in the books of accounts and he has rightly concluded where the entries with regard to payment through cheque do not co-relate with the entries recorded in the books of accounts, no cognizance of the entries recorded with regard to the entries relating to cash payment in the seized material can be taken. We therefore are of the view that CIT(A) has rightly adjudicated the issue. No defect has been pointed out by the learned DR. We

therefore confirm the order of the CIT(A) deleting the additions in both the years.

8. In appeal No. 1363/Bang/2017, one more ground is raised with regard to the deletion of addition of interest payment outside the books of accounts to the extent of Rs.1.09 crores. For the sake of reference, we extract the grounds raised in this appeal as under:

The CIT(A) ought to have upheld the decision of the Assessing Officer of making additions on account of cash payment to the sellers of the land to the tune of Rs.1.55 Crores and interest payment outside the books to the extent of Rs.1.09 Crores.

9. On careful perusal of the orders of the authorities below we find that this addition made was on the basis of the seized material in which certain entries of payment were found. In the foregoing paras when the seized material was not be relied on for making an addition on account of cash payment to the seller, this addition of Rs.1.09 crores on account of payment as interest is not sustainable in the eyes of law. The CIT(A) has also made detailed analysis of the evidences filed on record in this regard and for the sake of reference, we extract the relevant portion hereunder:

“4.18. Now, I come to second issue of ground no.(a) and (b) that is, interest payment made in cash which is treated as unexplained expenditure u/s. 69C amounting to Rs.1,09,05,000/-. The said addition is made in para 5 on page 15 of the assessment order. The contention of the AO is that during the course of search, page 36 of document seized vide No.A/PDL/03 dated 09.01.2013 showed details of interest on account of delay in payment of non-refundable deposits by way of various cheques issued by the appellant to TVAEPL. The relevant loose paper is reproduced by the AO on page no.17 of the assessment order. It is claimed by the AO in the assessment order that on the loose sheet in question, interest has been worked out at 52.4% per annum on delay in payment of sale consideration to TVAEPL. This payment according to the AO is made along with Rs.5 crores paid VI cash, which is outside the books of accounts.

4.19. During the assessment proceedings, an opportunity of being heard was given to the appellant. The appellant submitted that TVAEPL had raised a note proposing to charge interest amounting into Rs.1,09,05,000/- at the rate of 24% per annum and even had requested the appellant to pay the said interest. However, it was submitted that the appellant did not pay the interest to TVAEPL and therefore, requested the AO not to make an addition on the interest. The AO overruled the submissions of the 9pliellant stating that appellant is following mercantile system of accounting and presumed that the same has been paid in cash as the payment of interest was not recorded in the books of accounts.

4.20. While making this addition, the AO has relied upon the loose sheet at page no.17 of the assessment order which is same as loose sheet on page 4 of the assessment order. Page no 4 of the assessment order contains a loose sheet in which certain cheque as well as cash transactions are stated. The cheque transactions are available on the bank statements. The authenticity of the loose papers can be verified by comparing the cheque transactions written thereon with the bank statements. On verification of the loose sheets, it is found that the data on the said loose sheet do not match with the data in the bank statements. Thus when the data of cheque transactions is not matching with bank statements, the authenticity of cash transactions mentioned on the loose sheet becomes doubtful. I have already held in paras above that the authenticity of page 4 is not proved and therefore, transactions recorded therein cannot be taken as Conclusive evidence. In the same loose sheet, there is working of interest at the rate of 24%. This loose sheet is likely to have been prepared on 15.01.2011 and as per the supplementary agreement signed by the appellant and TVAEPL in 2008, there is a provision to charge interest at the rate of 24% on delayed payments of cheques. However, nothing is written on the loose sheet that this interest is actually paid by the appellant to TVAEPL.

4.21. During appellate proceedings, it was submitted by the AR of the appellant that the provision to pay interest is there in the supplementary agreement signed in 2008 but actually_ ru) such interest was paid due to recession in real estate, which started in 2008 and onwards and hence, it was mutually decided between the parties not to enforce the interest clause. Further, it was submitted that when the provision to pay interest is present in the supplementary agreement, the interest if at all paid or payable it would be paid by cheque. The AO has not been able to prove any additional evidence that the appellant withdrew cash from the bank account and paid the

interest. Moreover, the loose sheet also does not specify that such interest is paid by the appellant to TVAEPL in cash.

4.22. The appellant has subsequently signed one confirmation deed with TVAEPL on 30.06.2011 wherein, the receipt of all the amounts are confirmed and the said deed does not contain anything relating to such interest. In paras above, I have analyzed in detail the bank transactions of payment of sale consideration by the appellant to TVAEPL. During the course of the said analysis, it was found that the appellant has paid an interest of Rs.2.75 crores to M/s Somayaji Holdings Pvt. Ltd. by cheque and appropriate tax is deducted.

4.23. Further, decisions of Hon'ble High Court of Delhi in the case of CIT Vs Anil Bhalla 322 ITR 191 and CIT Vs Dinesh Jain (HUF) 211 Taxman 23, CIT Vs Jaipal Agarwal 212 Taxman 1, it has been held that the addition made by the AO based on the loose papers is not a conclusive evidence and therefore, the same is not sufficient for making the additions. Such documents or loose papers in absence of any other material to show that the assessee has concealed his income or made investment in undisclosed assets etc cannot be considered as conclusive evidence for making addition. Such loose sheets need to be corroborated with independent evidence.

4.24. In view of the above, I hold that the working of the interest done on the loose sheet was merely an estimate as claimed by the Director of the appellant. As no other evidence is available on record to prove that the interest worked on the loose sheet was actually paid in cash, the addition made by the AO totally relying upon the loose sheet cannot be sustained. Therefore, the addition of Rs.1,09,05,000/- made u/s. 69C of the I.T. Act stands deleted. The second issue of ground (a) and (b) stands allowed.”

10. During the course of hearing, the learned DR could not point out the defects in the order of the CIT(A). We, however, carefully examined the same and we find that CIT(A) has deleted the addition on account of interest paid outside the books of accounts and we find that the addition was deleted having noted that the loose sheets on the basis of which inference was drawn by the AO for interest on delayed payments itself is not reliable piece of evidence and the entries found with regard to the payment through cheque do not co-relate with the entries found in the books of account. We, therefore, are of the view

that CIT(A) has rightly examined the issue under the given facts and circumstances of the case and we do not find any infirmity in the order of CIT(A) and we confirm the same.

11. In the result, appeals of the Revenue stands dismissed.

Order pronounced in the open court on this 28th September, 2018.

Sd/-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Place : Bangalore
Dated : 28/09/2018
/NS/*

Copy to :

1	Appellant	2	Respondent
3	CIT	4	CIT(A)
5.	DR	6	Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore