

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

**श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष।**

**BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**आयकर अपीलीय संख्या/ ITA No.1353/Mum/2014**

**(निर्धारण वर्ष / Assessment Year 2006-07)**

Shreeji Transport Services P. Ltd Plot No. 107, Section 19-C, Shreeji Krupa Phase-II, Vashi, Navi Mumbai-400 705	Vs.	The Dy. Commissioner of Income Tax Circle 10(2), Aayakar Bhavan, Mumbai
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAEC3602B</b>		

**आयकर अपीलीय संख्या/ ITA No. 2195/Mum/2011**

**(निर्धारण वर्ष / Assessment Year 2006-07)**

Amplas Polmers Pvt. Ltd. C/o. 108, Padmavati Tower, Balaji Nagar, Station Road, Bhayandar (West), Thane 401101	Vs.	The Dy. Commissioner of Income Tax, Circle 10(2) Room No. 432/474, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAACA5330L</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Vipul Josh, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Pankaj Kumar, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	05-09-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	26-11-2018

**आदेश / ORDER**

महावीरसिंह, न्यायिक सदस्य/

**PER MAHAVIR SINGH, JM:**

These two appeals of two different assessee are arising out of the, order of Commissioner of Income Tax (Appeals)-

10(2)/IT-287/2009-10 vide order dated 07.01.2014 in the case of Shreeji Transport Services Pvt. Ltd. and the order of CIT(A)-X/IT/4142008-09 & CIT(A) 21/IT/314/2009-10 vide order dated 03.01.2011 in the case of Amplas Polymers P. Ltd. The Assessment was framed by the Dy. Commissioner of Income Tax, Mumbai-10(2) (in short 'DCIT/ AO') for the A.Y. 2006-07 vide order dated 02.12.2008 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'). The Assessment were framed by the Dy. Commissioner of Income Tax, Mumbai-10(2) (in short 'DCIT/ AO') for the A.Y. 2006-07 vide order dated 30.12.2008 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in ITA No. 1353/Mum/2014 for AY 2006-07 is as regards to the order of CIT(A) confirming the addition made by AO of ₹90,000/- being alleged unaccounted loan taken on Hundi. For this assessee has raised the following ground No. 1: -

*1. "Learned Commissioner of Income Tax (Appeals) erred in confirming the addition made by Learner Assessing Officer of Rs 90,000/- to the total Income of Appellant on the plea that the said amount represents alleged unaccounted loan taken on Hundi.*

*Appellant submits that in view of the facts and circumstances of the case as well as*

*in law the said addition to the total income of the appellant is bad in law and deserves to be deleted."*

3. Briefly stated facts are that during survey conducted on the business premises of the assessee on 24.02.2006 under section 133A of the Act, certain documents claimed to have found and impounded. This addition of ₹90,000/- relating to page 107 which contains discharge bill of exchange (Hundi) for a sum of ₹90,000/- drawn in the name of assessee dated 20-11-2005. According to AO, since it was not recorded in the books of accounts, the AO treated this Rs. 90,000/- as undisclosed income of the assessee. Before CIT(A), the assessee contended that the bill of exchange is dated 20.01.2005 and claim by Revenue as 20.11.2005 is not correct. The CIT(A) has not accepted the contention of the assessee by observing that the assessee's argument cannot be accepted as the date mentioned in the bill of exchange was 20.01.2005, whereas survey was conducted on 24.02.2006 and he observed that the intention of the assessee that Hundi was drawn in anticipation of loan to be taken is to be considered as true then, when loan is really not taken, the same cannot be kept in the custody of the assessee. Aggrieved, now assessee is in second appeal before Tribunal.

4. Before us, the learned Counsel for the assessee drew our attention to page No. 25 of the assessee's paper book i.e. document impounded by the Revenue during the survey and the learned Counsel for the assessee particularly drew our attention

to this document of 90,000/- i.e. bill of exchange which is dated 20.01.2005 and apart of this there is no other date mentioned on this bill of exchange. The learned Counsel for the assessee stated that this does not fall in AY 2006-07 rather it falls in AY 2005-06. Hence, no addition can be made in this year. When this was confronted to the learned Sr. Departmental Representative, she could not rebut the claim of the assessee.

5. After hearing both the sides and going through the facts of the case, we are of the view that this bill of exchange is dated 20.01.2005 and it relates to AY 2005-06. Hence, no addition can be made in AY 2006-07. Hence, we delete the addition and allow this issue of assessee's appeal.

6. The next common issue in these two appeals of different assessee is as regards to the addition made by AO and confirming by CIT(A) on account of alleged profit in share transactions amounting to ₹1,28,60,500/- in the case of Shreeji Transport P. Ltd. and amount of ₹97,01,050/- in the case of Amplas Polmers Pvt. Ltd. For this, assessee in ITA No. 1353/Mum/2014 in the case of Shreeji Transport P. Ltd has raised the following ground No. 2: -

*"2. Learned Commissioner of Income Tax (Appeals) erred in confirming the additions made by Learned Assessing Officer of Rs. 12860500/- to the total income of the appellant being alleged*

*profit in share transactions as income of the appellant.*

*Appellant submits that in view of the facts and circumstances of the case as well as in law the said addition to the total income of the appellant is bad in law and deserves to be deleted."*

Another, assessee in ITA No. 2195/Mum/2011 in the case of Amplas Polmers Pvt. Ltd. has raised following two grounds: -

*"1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has failed to appreciate the retraction of statement by director of Your Petitioner at the time of Survey action on account of additional income from share trading of Rs. 97,01,500/- and has erred in making additions of Rs. 97,01,500/-.*

*2. On the facts and in the circumstances of the case and in law, the Learned CIT (A) failed to appreciate the fact that additions on account of income from share trading as Your Petitioner is a Limited Company and have never indulged in any activity of share trading since its inception till date and as such the*

*Learned CIT(A) be directed to delete the said additions of Rs. 97,01,500/-."*

7. Brief facts in the case of Shreeji Transport P. Ltd. in ITA No. 1353/Mum/2014 for AY 2006-07 a survey action under section 133A of the Act was conducted in the business premises of the assessee at Shreeji Kripa, Plot No. 107, sector No. 19/C, Phase II, Vashi, Navi Mumbai -400714 on 24<sup>th</sup> February 2006 by the IT Department. During the course of survey only one document relating to Hundi of ₹90,000/- was found, which relates to ground No. 1 which we have already adjudicated and find that pertains to AY 2005-06. According to Revenue, one document in Excel print out relating to shares speculation transaction i.e. purchase and sale of shares showing 17 transactions between 03.04.2005 to 05.08.2005 was taken a print out from the computer. On the basis of this excel sheet a statement of one of the directors Mr. Rajnikanth C Shah was recorded in intervening night of 24<sup>th</sup> and 25<sup>th</sup> February 2006 in view of the excel sheet impounded as Annexure A-4. The purchase value of shares was disclosed at ₹6,93,31,000/- and sale consideration of shares was at ₹8,21,91,500/- and thereby the profit arising from sale and purchase of these shares comes to ₹1,28,60,500/-. According to AO, these transactions were accounted as unaccounted by the director Shri Rajnikanth C Shah and declared the income of ₹1.50 crores. Before us, the assessee explained that these documents also retracted the statement on 24.02.2007 making declaration of 1.50 crores. However, the assessing officer has not accepted the

explanations of the assessee and have been retracted and added the profit from sale and purchase of shares as speculative profit at ₹1,28,60,500/-. The peculiar fact of this case is that the assessee company is engaged in the business of transportation and as per statement given by the learned Counsel for the assessee now before us that assessee is not at all engaged in trading of shares prior to two years of this assessment year or after two years of this assessment year. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the action of the addition by adding presumption under section 292C of the Act that the document found during the course of survey is to be treated as correct and true. According to CIT(A), the assessee failed to rebut the presumption and hence, he confirmed the action of the AO by observing in para 3.4 to 3.17 as under: -

*"3.4 I have carefully considered the submission of the appellant and the impugned assessment order. The allegation of the appellant is that the above transaction statement was entered into by the income-tax authorities on the spot during the course of survey in appellants one of the computer systems and the director was compelled to own-up the same on behalf of the company and it did not relate to the business activity. However, the appellant did not bring any*

*evidence before me to show that it has been really entered into by the Income-tax officials on the day of survey. The table containing the data of such transaction can be opened either in a text file or in a excel sheet. From the copy in the Annexure-A, I could see that it is a table created in Excel sheet. In my view, it is for the appellant to prove that the date of creating file in the computer system was only on the date of survey. When the files are created and subsequently when it is modified, the audit trail is available in the computer system. Such authentic information was not produced as evidence before me to rebut the above allegation and hence, I am inclined to accept the contention of the appellant that Income-tax authorities only had entered such the data at the time of survey.*

*3.5 It was the allegation of the appellant that the Director was compelled to sign the statement at 5.00 a.m. in the morning on 25.02.2006 and the statement was signed only to get rid of the situation. It was also submitted that on the conclusion*

*of the survey proceeding, cheques have been taken against the tax liability towards declared undisclosed income. However, on 13.03.2006, a letter was filed by the appellant requesting the AO not to encash the cheques and according to the appellant, it is a proof that the appellant did not agreed to such alleged undisclosed income. The appellant had also filed an affidavit dated 28.02.2006 but verified by the notary on 14.03.2006 and the same was filed on 05.04.2007. Thus, filing the above affidavit, the appellant had retracted the statement given at the time of survey proceeding.*

*3.6 The contention of the appellant that the transaction should have unique order identification number which can be verified from NSE and BSE without which it is possible to have any transactions through stock exchange, there is no trade files created from the stock exchange and hence transaction cannot be verified. Moreover, there is no STT charges have been and no brokerage has also been paid and further, the rate of shares generally be an odd amount and hence working*

*sheet is absolutely imaginary. This contention of the appellant cannot be accepted as the AO had clearly mentioned in the assessment that it was only an off-market transaction and the above information would be relevant in cases where the transactions are through stock exchange. In an off-market transaction, there is no need of any formalities as claimed by the appellant.*

*3.7 The appellant had obtained an affidavit verified by the notary on 14.03.2006 and the same was filed on 05.04.2007 for the proposition that statement recorded was invalid. Mere filing an affidavit without any corroborative evidence would not make the statement invalid.*

*3.8 In view of the above discussion, I conclude that mere retraction of the statement by filing the affidavit is not acceptable evidence in the eyes of law. The affidavit filed before me is only a self-serving document without any corroborative material. Hence I conclude that the statement recorded by the*

*Assessing Officer is valid in the eyes of Law.*

*3.9 As per section 292C the presumption is that whatever documents, loose sheets, books of account found etc. is found in the appellants premises, it belongs to it and the contents of such books of account and other documents are true. The section is as under: -*

*Presumption as to assets, books of account etc.292C ((1)) Mere any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 for survey under section 133A], it may, in any proceeding under this Ad, be presumed*

*(i) that such books of account, other documents. money, bullion, jewellery, or other valuable article or thing belong or belongs to such parson;*

*(ii) that the contents of such books of account and other documents are true; and*

*(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.)*

*[(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of subsection (1) shall apply as if such books of account, other documents or assets which had been taken into custody from*



*the person referred to in clause(a) or clause (b) or clause (c), as the case may be, of subsection( 1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.J*

*3.10 It may be noted here that section 292C of the I.T. Act was made applicable to the survey proceedings u/s. 133A of the I.T. Act also with effect from 01.06.2002. Thus, it is applicable to the assessment year under appeal i.e. A.Y.2006-07.*

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*3.13 Though the above decision was rendered in the context of search, but the findings can be applied to the facts in appellant's case, as section 292C is applicable to survey u/s 133A of the Act also. Even before me the appellant failed to bring any evidence that the Income-tax authorities only had entered the data containing share transaction at the time of survey and also failed to bring any*

*evidence on record to show that the material impounded did not belong to him. Hence it is concluded that the excel sheet containing the transaction of shares belonged to the appellant only, since the presumption u/s 292C stood unrebutted.*

*3.14 The Assessing Officer has recorded a statement on oath on 24.02.2006 which was retracted later by filing an affidavit on 05.04.2007 and the reason adduced was that the statement was made out of fear, frustration and under pressure and not maintaining good health. The statement was not retracted immediately. Though the affidavit was signed by the notary in the month of February 2006, I wonder what prevented the appellant to file the same before the AO in the month of April 2007. The statement was retracted year 2 months after it was recorded. As it was not retracted within a reasonable time immediately after it was recorded and in the absence of independent and cogent evidence to show that the statement recorded was incorrect, the retraction by the appellant is. not valid and the same cannot be accepted.*

*3.15 It is a settled law that admission is extremely important piece of evidence as held by the Hon. Apex Court in the case of Pullamcode Rubber Co. Ltd. reported in 91 ITR 18. However, an admission is not conclusive and it is open to the assessee who made it to show that it was incorrect. In this case the appellant had no material to controvert that the admission made was incorrect. The undisputed fact is that the statement was voluntarily given by the Director Shri Rajnikant Shah. The relevant portion of the statement is as under:-*

*'Q. 26 From your Excel file a printout of the file therein now taken showing share transactions of purchase and sales - what do you have to state in this regard?*

*Ans. The above ledger accounts contains the details of the share speculation transactions entered into by us due to favourable share market position during the current financial year.*

*Q.27 What is the total profit earned by you from such transactions?*

*Ans. The said transactions has resulted in cash profit of Ps. 1,28,60,5001-.*

*Q.28 Have you considered the above income in your regular books of accounts?*

*Ans. The said profit has accrued to us for the first time in the current financial year and has therefore, remained to be accounted for since this is not a part of our regular business.*

*Q.29 Where is the cash consideration received was kept by you?*

*Ans. It has been kept with my friends and relatives for safe custody.*

*Q.30 Please give the names and addresses of these parties?*

*Ans. I am sorry to state that this would be against my business*

*ethics. However, I would like to offer the some as additional income during the current financial year and would be paying corresponding tax on the same.*

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*3.17 In view of the above discussion, I uphold the action of the AO in bringing the undisclosed income Rs.1,26,60,500/- earned through off market speculative share transactions. This ground of appeal Is dismissed.”*

Aggrieved, now assessee is in second appeal before Tribunal.

8. We have heard rival contentions and gone through the facts and circumstances of the case. The brief background relating to the addition of ₹1,29,60,500/- made on the basis of loose paper are that a survey under section 133A of the Act was carried out by the Department on the business premises of the assessee at Vashi on 24.02.2006 at 2.30 P.M. The survey lasted for more than 15 hours and finally concluded at 25.02.2006 at 5 A.M. During the survey, the survey party recorded the statement of Director Shri Mr. Rajnikanth C Shah at 2.45 A.M. and Director gave answer to the question which was put before him upto the satisfaction of the survey party. However, no

incriminating materials/documents etc. were found by the survey party apart from the alleged print out containing the details of share speculation transaction due to favorable share market position. The alleged document, as contended by assessee that the survey party made the accountant of the assessee company to type certain figures on blank page in the computers, projecting certain transactions of sales and purchases and accordingly, print was taken. The Revenue put pressure on the assessee to make surrender of ₹1.50 crores based on the print out. The alleged document pointed earning of speculation of income of ₹1.28 crores. The assessee was put question Nos.26-30 and the relevant questions and its replies read as under: -

*"26. From you Excel file a print out of the file therein now taken showing share transaction of purchase and sale what do you have to state in this regard?"*

*Reply: - The above ledger accounts contains the details of the share speculation transaction entered into by us due to favourable share market position during the current financial year.*

*Q. 27. What is the profit earned by you from such transactions?"*

*Reply:- the said transactions has resulted in cash profit of ₹ 1,28,60,500/-.*

*Q. 28. Have you considered the above income in your regular books of accounts?*

*Reply:- The said profit has accrued to us for the first time in the current financial year and has therefore, remained to be accounted for since this is not a part of our regular business.*

*Q. 29. Where is the cash consideration received was kept by you?*

*Reply:- It has been kept with my friends and relatives for safe custody.*

*Q.30. Please give the name and address of these parties?*

*Reply:- I am sorry to state that this would be against by business ethics. However, I would like to offer the same as additional income during the current financial year and would be paying corresponding tax on the same."*

9. We noted from the arguments of the assessee that, (i) the summary of the question is that the print out contains the details of share speculation transaction entered due to favorable share market position, (ii) Cash profit of ₹1,28,60,500/- i.e. cash lying with friends and relatives but without names and addresses, (iii) remained to be accounted since the first time.

Accordingly, disclosure was taken by the department of ₹1.50 crores including this income of ₹1.28 crores on account of alleged speculation of income. The assessee also gave post-dated cheque of ₹44 lacs towards the tax on the income so disclosed.

10. During the same time, parallel survey was carried out by the same officer on the premises of Amplus Polmers Pvt. Ltd., a sister concern of the assessee having its office at Sakinaka, Andheri. This concern has altogether different set up as well as business activities as compared with the assessee. One of the directors of Amplus Polmers Pvt. Ltd. i.e. Mr. Shailesh Shah is the brother of the two directors of the assessee company. There is also the same pattern and exactly on identical facts ensued similar surrender of ₹1 crores as against the print out of alleged speculation of income of ₹97,01,500/-. One of the directors namely Mr. Shailesh Shah, in his statement categorically stated that at present, CPU in which it maintained data has been given for repairs and maintenance to Akshar Computer, whose proprietor is Mr. Nilesh Shah. Here, very significant fact is that the computer of the Amplus Polmers Pvt. Ltd. was under repair and from their also the department has taken out the print and the data generating are similarly depicting alleged speculation profit were fitted by the accountant of the assessee at the assessee's place at Vashi and print of that paper was also taken accordingly. It was contended by assessee before us that both the documents are of same letters and same fonts and same description and both statements were recorded at the same



place at Vashi. Even, the fact is that the Survey Officer also was same, as is evident from the statements recorded i.e. Mr. B D Mitra, ACIT, Circle 10(2), who was present at Vashi office of Shreeji Transport Services Pvt. Ltd. The assessee before us, explained that both the statements were recorded at the premises of Shreeji Transport Services Ltd. situated at Vashi and no signature of the AO or Authorized Officers is affixed on the first page of the statement of Amplus Polmers Pvt. Ltd. which is enclosed at assessee's paper book at page 30.

11. Our attention was drawn to question No. 17 in the case of Ample Polmers Pvt. Ltd., the statement recorded during the course of survey, wherein the hand writing upto question No. 17 is of the inspector, who recorded the statement at Andheri. Thereafter, the remaining part of the statement in connection with the alleged surrender of speculation profit was recorded by Shri B D Mitra, ACIT Circle 10(2) Vashi at the office of Shreeji Transport at Vashi. It is to be mentioned that there are same witnesses in both the statements i.e. of Shreeji Transport as well as Ample Plomers Pvt. Ltd. It was contended that in the case of Shreeji Transport print out showing seventeen transactions dated between 03.04.2005 to 05.08.2005 as against the Ample Plomers Pvt. Ltd. showing five transactions dated between 13.04.2005 to 12.06.2005. It was contended that both the documents were prepared and the print was taken at the same time at late night of 24.02.2005. It was contended that both the documents are identical in format, feature, font etc. Hence, the learned Counsel for the assessee stated that

these two documents are just framed by the authorized officers of the survey party and it is improbable to believe that two different and independent companies situated at two different locations maintained the same format of the alleged speculation profit. To support this, the learned Counsel for the assessee drew our attention to forensic record enclosed at pages 66 to 88 of the assessee's paper book at P-2 which has certified that these documents are created on the very same day i.e. on 24.02.2006 at 8.31 P.M. The relevant portion of the report read as under: -

#### *"Inferences*

- 1. The Hard disk marked 'Q' contained Microsoft Excel file named 'Book.xlsx' dated '25-02-2006 in the location 'Partition 1 (Microsoft NTFS, 465.76 GB) Element/ Old C Backup/ Documents and Settings/DEEPAK/ Book1.xlsx' containing three excel sheets named 'Sheet1', 'Sheet2' and 'Sheet3' out of which the excel sheet named 'Sheet1' containing the data, which is provided as 'Annexure'.*
- 2. The file properties of the Microsoft Excel file named "Book1.xls' dated '25-02-2006' suggests that the 'created' date and time could be 25.02.2006 02:02:21 AM, as per the host/ system date time*

*settings. However, embedded Microsoft Excel file properties shows the date of the file as 24.02.2006 20.31.21 and the file system data and time suggests that the file could have been copied/ moved to the hard disk marked 'Q' on 19.02.2010 08.46.11 PM, as per the host/ system date time settings.*

*3. The file properties of the Microsoft Excel file named 'Boom1.xls' dated '25.02.2006' suggests 02:02:21 AM, as per the host/ system date time settings. However, embedded Microsoft Excel file properties shows that the date of the file as 24.02.2006 20:31:21 and the file system data and time suggests that the file could have been copied/ moved to the hard disk marked 'Q' on 19.02.2010 08:46:11 PM, as per the host/ system date time settings.*

*3. The file properties of the Microsoft Excel file named 'Book.xlsx' dated '25-02-2006 02:55:38 AM, as per the host/system date time settings. However, the embedded file properties of the Microsoft Excel shows 2—6/02/24 21:25:38 as the date of creation of the*

*primary file and file system data and time suggests that the file could have been copied / moved to the hard disk marked 'Q' on 25.02.2006 08.25.40 AM, as per the host/ system date time settings.*

*4. The file properties of the file named 'Book1.xls' dated 25.02.2006' suggest that the 'last Accessed' date and time could be 01.09.2010 01.08.07 PM, as per the host/ system date time settings. However, the Microsoft Excel file property did not contain the 'Last Accessed' data and time.*

*5. The file properties of the Microsoft Excel file properties of file named 'Book1.xls' dated 25-02-2006 suggests that the 'last printed' date and time could be 25.02.2006 02.51.55 AM, as per the host/ system date time settings/ However, embedded Microsoft Excel file properties shows 2006/02/24 21:21:55 as per the host/ system time of the primary file.*

*6. the author of the file named 'Book1.xls' dated 25.02.2006 is 'ABC' with company name 'XYZ'.*

7. The last opened user attribute of the file named 'Book1.xls' dated 25.02.2006 indicated that the file had been last opened through a user account named 'User'. The file metadata. Did not contain any information regarding the Application Version.

### Report

Based on the above-mentioned examinations, observations and findings, Inferences the following is opined:

1. The embedded Microsoft Excel file properties of the name 'Book1.xls' dated 25.02.2006 suggests that the 'Created' date and time of this file could be 24.02.2006 20.31.21, as per the host/system time used to generate the primary filed.

2. The Hard disk marked 'Q' contained Microsoft Excel file name 'Book1.xls; dated 25.02.2006' in the location 'Partition 1 (Microsoft NTFS, 465.76 GB) Element\ Old C Backup\documents and settings\administrator\My documents\ Deepak \ Book1.xls' with MD 128 Bit hash integrity value

*'684FC990769625DA3B5D8341ABBFA5F1'  
, containing three excel sheets named  
'Sheet1', Sheet2 and sheet 3 out of which  
the excel sheet named 'Sheet1 containing  
the data is provided as 'Annexure'."*

12. We noted that the print out does not indicate even the name of the assessee. It does not, in any way, otherwise also refers to or indicates the name of the assessee or its involvement directly or indirectly or even remotely. On this preliminary aspect itself, any connection of the assessee with the document can be linked, especially when there is no other corroborative evidence. Even otherwise, there is absolutely no description of any nature indicating the nature of the alleged transactions depicted. It does not indicate with respect to which item/commodity the transactions of purchases /sales, if at all to be taken cognizance of, were about. We noted that the item is to be presumed as shares, there is absolutely no name of any company or types of securities, etc. There is no name/indication of any party involved that is the buyer or the seller. There is absolutely no indication whether the transactions, if at all, were actually undertaken and if yes, how and where. Going further, there is absolutely no indication whether the transactions, if at all, were settled and, if so, how? Whether in cash, cheque or draft etc. There is absolutely no indication/detail as to who made the payment and to whom and how the payments were made if at all. Assuming, for the sake of argument that the transactions, if at all, were of the nature of speculative

transactions in shares, it is not clear under which stock exchange and how such alleged speculative transactions were undertaken. No details like name and registered number of broker, Client's Registration Number with broker, Client's Registration Number with broker, demat account number, broker note, etc. It is not possible to undertake transactions involving funding of Rs.6.93 crores. Not possible to undertake such transactions under strict SEBI/Sock Exchange guidelines. No reference to BSE/NSE. No Unique Order Identification Numbers. No co relation or verification with BSE / NSE by obtaining TRD [Trade] tiles.

13. Each transaction of purchase and sale is not possible to round off due to various charges and levies, like brokerage, STT, stamp duty, service tax, etc. 800 quantities of the item not sold. Not found. Most importantly, many of the dates fall on Saturday and Sunday [Ref. Pgs. 105— 106, highlighting such days]. This conclusively proves impossibility of such transactions ever taken place. In other words, the document is barefoot of any normal/essential/basic detail, which would indicate/suggest even for a prima facie belief based only on such document, that, actually and in reality, any income was earned and, that too in cash, and that too, on account of speculative share transactions, and that too, by the assessee. Even otherwise, this document defies any logic and is absolutely against normal human probability. It is too simplistic and make-believe document to be treated as 'evidence' of speculation transactions, that too, generating profit of Rs. 1.28 crores.

14. From both the statements of alleged speculation statements, it is seen that shares are alleged to have been purchased in one set. After each set of transaction, one blank space is left in both the cases. From the chronological order of dates of sales, it can be seen that it is only after selling first set of shares, the second set of shares is sold (Compare date of sales). Further, it is only after selling second set of shares, third set of shares is sold and so on so forth. This trend is continued in both the statement. This is highly improbable as no investor or a trader will follow this discipline. He will sell any shares which he deems fit without following the FIFO method. Also, it is surprising to note that same trend is followed by 2 different Companies. There are no loss transactions whatsoever in either of the companies which is again a highly improbable proposition and if there are no loss transaction then why would anybody discontinue this alleged highly profitable business. No other incriminating corresponding document/valuable asset/evidence or any type of irregularity detected/found, collaborating the allegation of earning of such huge unaccounted income. (In contradiction with Answer 3, where Mr. Shah categorically stated that all supporting documents/books/vouchers of accounts laying in the premises.]. As per statement itself 4 no document of assessee kept anywhere outside. No other irregularity found in books. Admittedly, the assessee had never entered into any share transaction in past or even subsequently. It defies any logic why the assessee should have ventured into share transaction, that too, speculative in nature, suddenly and without any reason. It also defies logic, why, if it



was so lucrative so as to earn Rs. 1.28 crores in such a short period and absolutely without any effort, the assessee should discontinue such activity after few months. The Survey Party was obviously aware about such lacuna/defects/non - existence of any detail, as not a single question was asked about such vital details/missing links, shortcomings, which any normal investigation officer would have asked.

15. In view of the above factual situation, we are of the view that the alleged print out in both the cases i.e. Shreeji Transport Services and Amplas Ployments Pvt. Ltd., both are dumb documents and no cognizance of the same can be taken for making addition. Both the authorities below have erred in making addition. Hence, addition of ₹1,28,60,500/- in the case of Shreeji Transport Services Pvt. Ltd. and addition of ₹97,01,500/- is deleted.

**16. In the result, both, the appeals of assessee are allowed.**

Order pronounced in the open court on 26-11-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 26-11-2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai