

19. Mr. Jayantilal Jain was the erstwhile partner of Om Sai Siddhi Riddhi Developers (OSSRD). Upon his retirement, his share was transferred to the assessee.

20. Based on the digital evidences in the form of files stored in the pen drive of Sanjay, the A.O surmised that an amount of Rs 1,91,86,765 was paid to Mr. Jayantilal Jain for retirement from the firm and for retiring from Wadhghar project, over and above the amounts specified in the Books of accounts. This amount was assessed as undisclosed income in the hands of the assessee.

### **Gist of our submissions**

- i) The addition has been made purely on assumptions and presumptions based on the pen drive data, belonging to Mr. Sanjay, without any corroborative evidence.
- ii) It is settled principle that file created and stored in a pen drive of a third party cannot be the basis of addition, without any corroborative evidence to support the same. It is also settled principle that additions cannot be made merely on the basis of loose sheets, without any corroborative evidence
- iii) Additions cannot be made, merely based on disclosure statement, unless there are corroborative evidence. Confessions extracted during search should be supported by collection of evidence of income
- iv) Absence of any verification/ confirmation of opposite party makes the addition untenable
- v) Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions.

### **ISSUE No. 6**

**Mr. M. N. Rajendra Kumar**

**A.Y. 2014-15, 2015-16, A.Y 2016-17 & A.Y 2017-18 ; ITA  
No.2261, 2262,**

**2263 & 2264/Bang/2019**

**Mr. Rohan Monteiro**

**A.Y. 2016-17 ; ITA No.2357/Bang/2019**

**Cash received in projects developed with Property Infra Tech India Pvt. Ltd (PIPL)**

21. Property Infra Tech India Pvt Ltd (PIPL) was a company in which Mr. Rohan Monteiro was a director. Global Star Realtors Pvt Ltd was a company in which the assessee was a director. These two companies have entered into MoU's for development of three projects, namely Micasa, Ventura and Premiero projects.

22. Based on the loose sheets found during survey action in the SCDCC bank, the A.O had surmised that the assessee had received cash, over and above the price stated in the agreements. The A.O surmised that a portion of the amount was received in cash and the balance was adjusted against land purchased from Mr. Rohan Monteiro.

**Gist of our submission**

- i) From the assessment order, it is clear that the loose sheets of digital evidence relied upon by the A.O was found in the office premise of the SCDCC bank and therefore the documents were not in the possession and control of the assessee. No attempt has been made by the A.O to find out the actual ownership of these loose sheets and hence the documents cited are unreliable.
- ii) The addition has been made purely on assumptions and presumptions based on certain digital evidence found in third party premise, without any corroborative evidence.
- iii) It is settled principle that digital evidence cannot be the basis of addition, without any corroborative evidence to support the same. It is also settled principle that additions cannot be made merely on the basis of loose sheets, without any corroborative evidence
- iv) Additions cannot be made, merely based on disclosure statement, unless there are corroborative evidences. Confessions extracted during search should be supported by collection of evidence of income
- v) Absence of corresponding entries in the accounts/ confirmation of opposite party make the addition untenable. No attempt has been made to make any verification on the veracity of the loose sheets

- vi) Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions, which has not been discharged
- vii) The A.O had admitted that the project is carried out by the company, Global Star Realtors Pvt. Ltd. As can be seen from the assessment order, the projects have been carried out by an agreement between Global Star Realtors and Property Infra Tech Pvt Ltd. (PIPL). As such, the alleged cash component cannot be taxed in the hands of the directors.
- viii) Alleged incriminating material found during survey proceedings, that too in the premise of a third party, cannot be used in search assessment proceedings.

#### **ISSUE No. 7**

**Mr. M. N. Rajendra Kumar**

**A.Y 2017-18 ; ITA No.2264/Bang/2019**

#### **Cash received on the sale made by M/s Smart builders & Developers**

23. Based on the loose sheets found during survey action in the SCDCC bank, the A.O had surmised that the assessee had received an amount of Rs.1,05,00,000/- in cash, over and above the price stated in the agreement for sale of commercial complex developed by M/s Smart builders & Developers. This amount was added as undisclosed income in the hands of the assessee.

#### **Gist of our submission**

- i) From the assessment order, it is clear that the loose sheets of digital evidence relied upon by the A.O was found in the office premise of the SCDCC bank and therefore the documents were not in the possession and control of the assessee. No attempt has been made by the A.O to find out the actual ownership of these loose sheets and hence the documents cited are unreliable.
- ii) The addition has been made purely on assumptions and presumptions based on certain digital evidence found in third party premise, without any corroborative evidence.

- iii) It is settled principle that digital evidence cannot be the basis of addition, without any corroborative evidence to support the same. It is also settled principle that additions cannot be made merely on the basis of loose sheets, without any corroborative evidence
- iv) Additions cannot be made, merely based on disclosure statement, unless there are corroborative evidences. Confessions extracted during search should be supported by collection of evidence of income
- v) Absence of corresponding entries in the accounts/ confirmation of opposite party make the addition untenable. No attempt has been made to make any verification on the veracity of the loose sheets
- vi) Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions, which has not been discharged
- vii) The A.O had admitted that the project is carried out by Smart Builders & Developers and therefore, the alleged cash component cannot be taxed in the hands of the assessee.
- viii) Alleged incriminating material found during survey proceedings, that too in the premise of a third party, cannot be used in search assessment proceedings.

## **ISSUE No. 8 — Revenue Appeal**

**Mr. M. N. Rajendra Kumar**

**A.Y 2016-17 ; ITA No.2457/Bang/2019**

### **Investment in Jewellery**

24. During search proceedings, certain jewellery was found and since the assessee was not able to explain the source at that time, an amount of Rs 98,00,000 was disclosed as undisclosed investment in jewellery. However, during assessment proceedings, the assessee was able to explain certain jewellery as belonging to wife and daughter and the balance amount shown in the wealth tax return of the assessee. However, the A.O disregarded the explanation and added the same only because it was disclosed at the time of search action.

25. The CIT(A) considered the submissions and after considering the amount of jewellery allowed as per CBDT instruction for each member of the family and after considering the jewellery disclosed in the wealth tax return of the assessee accepted the explanation offered and deleted the addition.

26. The decision of the CIT(A) is based on facts and needs to be upheld.

### **ISSUE No. 9 — Revenue Appeal**

**Mr. M. N. Rajendra Kumar**

**A.Y 2016-17 ; ITA No.2457/Bang/2019**

#### **Unexplained expenditure in Global exports Ullal (Building lease)**

27. M/s Global export is a partnership firm in which the assessee is a partner. It has taken a factory building on lease from M/s India Fish metal.

28. Based on a loose sheet found during the survey action in the case of SCDC bank, the A.O had surmised that out of payment of Rs 10.5 Crores paid towards factory lease, an amount of Rs 1,00,00,000 was paid in cash and added this amount in the hands of the assessee.

29. The CIT(A) deleted the addition, on the following grounds :

- i) It is settled position of law that unless disclosure statement is tested under cross examination, the same cannot be considered as evidence against the assessee
- ii) Admission itself cannot be considered as conclusive evidence, unless there is corroborative evidence on record

30. The finding of the CIT(A) is correct on principles, upheld by many decisions of higher judicial authorities and needs to be upheld.

**ISSUE No. 10 — Revenue Appeal**

**Mr. M. N. Rajendra Kumar**

**A.Y 2016-17 ; ITA No.2457/Bang/2019**

**Unexplained expenditure in Om Sai Siddhi Developers (SS Developers)**

31. Based on certain entries in some loose sheets found in the seized records, the A.O had surmised that the assessee has made substantial cash investment in various other projects and estimated such investment to be Rs 10 Crores and added the same to the Assessee's income.

32. The CIT(A) accepted the submission of the assessee that the A.O erroneously relied on the estimations in the seized material and estimated cash flow statement and deleted the addition, on the following grounds :

- i) It is settled position of law that unless disclosure statement is tested under cross examination, the same cannot be considered as evidence against the assessee
- ii) Admission itself cannot be considered as conclusive evidence, unless there is corroborative evidence on record

33. The finding of the CIT(A) is correct on principles, upheld by many decisions of higher judicial authorities and needs to be upheld.

**ISSUE No. 11 — Revenue Appeal**

**Mr. M. N. Rajendra Kumar**

**A.Y 2016-17 ; ITA No.2457/Bang/2019**

**Unexplained investment in construction of factory of Kusuma Cashew**

34. The A.O had surmised that during search action, the assessee had declared an amount of Rs. 1 Crore towards unexplained investment in the factory premises of Kusuma Cashew and added the same to the undisclosed income of the assessee.

35. As this addition was without any basis and without any evidence, the CIT(A) deleted the addition, on the following grounds:

- i) It is settled position of law that unless disclosure statement is tested under cross examination, the same cannot be considered as evidence against the assessee
- ii) Admission itself cannot be considered as conclusive evidence, unless there is corroborative evidence on record

36. The finding of the CIT(A) is correct on principles, upheld by many decisions of higher judicial authorities and needs to be upheld.

### **ISSUE No. 12 — Revenue Appeal**

**Mr. M. N. Rajendra Kumar**

**A.Y 2017-18 ; ITA No.2366/Bang/2019**

#### **Unexplained investment of in Om Sai Siddhi Developers ( SS Developers) in Novodaya Estate Land Development**

37. The A.O had surmised that during search action, the assessee had declared an amount of Rs 10 Crores towards unexplained investment in Novodaya Estate Land Development and added the same to the undisclosed income of the assessee.

38. As this addition was without any basis and without any evidence, the CIT(A) deleted the addition, on the following grounds:

- iii) It is settled position of law that unless disclosure statement is tested under cross examination, the same cannot be considered as evidence against the assessee
- iv) Admission itself cannot be considered as conclusive evidence, unless there is corroborative evidence on record

39. The finding of the CIT(A) is correct on principles, upheld by many decisions of higher judicial authorities and needs to be upheld.

**OTHER GROUP CASES:**

**ISSUE No. 13**

**Walter Noronha**

**A.Y 2015-16 ; ITA No.1630/Bang/2019**

**Unexplained cash invested in finance business**

40. This assessee, a former driver in KSRTC, is a former driver of Mr. Rohan Monteiro and has no other source of income. Search was conducted in the residence of this assessee.

41. Based on the loose sheet found during search, the A.O had surmised that the assessee is in the business of financing and that the assessee is in possession of amounts to the extent of Rs 1,83,00,000, which was added as the undisclosed income of the assessee.

42. The CIT(A) deleted the addition, by making the following findings:

- i) Retraction of statement given during search action cannot be countered unless there are other supportive evidence;
- ii) No serious effort has been made to trace the persons named in the loose paper other than asking the assessee to provide the address;
- iii) The details on the loose sheet have not been deciphered
- iv) There is no merit in making additions only based on statement recorded during search when it has been retracted and no evidence brought on record to corroborate the statement;

43. The findings of the CIT(A) is based on correct appreciation of the facts of the case and is in conformity with the principles enunciated by various decisions of the higher judicial authorities. No material has been brought on record to counter the findings of the CIT(A) and therefore it needs to be sustained. (oath statement enclosed herein).

**ISSUE No. 14**

**Mohammed Ameer**

**A.Y 2014-15, 2015-16, 2016-17 & 2017-18 ; ITA No.2373, 2374,  
2375 & 2376/Bang/2019**

**Cash receipts towards construction of projects**

44. Search action was taken in the case of this assessee. The assessee was having a proprietary concern by name, M/s Coastal Construction. This has entered into an agreement with various developers for construction of three commercial buildings and site development.

45. Based on certain loose sheets found during search, the A.O had surmised that the assessee has received cash from the developers as consideration for the various projects constructed by the firms and these amounts as undisclosed income in the hands of this assessee. As per the A.O, the assessee had received cash towards construction of three projects, namely,

- i) Sahakari Sadan by MA Smart builders & developers
- ii) Garden city Project by Hindustan Bawa and
- iii) Oceanic view by Namko Builders

46. The A.O added the alleged cash received from these projects in various years, as detailed in the assessment order.

47. However, the CIT(A) treated the assessee as a contractor and considered these cash receipts as contract income and ordered taxing these receipts @ 8% of the receipts, thereby granting partial relief.

48. The A.O also made additions towards investment in gold jewellery, which was deleted by the CIT(A).

### **Gist of our submission**

- i) The A.O has made the addition based on surmises and assumptions, based on certain loose sheets, without bringing any corroborative evidence on record.
- ii) It is settled principle that additions cannot be made merely on the basis of loose sheets, without any corroborative evidence
- iii) Additions cannot be made, merely based on disclosure statement, unless there are corroborative evidences. Confessions extracted during search should be supported by collection of evidence of income
- iv) Absence of corresponding entries in the accounts/ confirmation of opposite party make the addition untenable. No attempt has been made to make any verification on the veracity of the loose sheets  
and the excel sheet in the pen drive.
- v) Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions, which has not been  
discharged
- vi) The A.O had admitted that the projects are carried out by the firm  
and therefore, the alleged cash component cannot be taxed in the hands of the assessee.

### **ISSUE No. 15 — Departmental Appeal**

**Mohammed Ameer**

**A.Y 2014-15, 2015-16, 2016-17 & 2017-18 ; ITA No.2373, 2374,  
2375 & 2376/Bang/2019**

#### **Cash Receipts towards construction of projects**

49. Search action was taken in the case of this assessee. The Assessee has entered into an agreement with various developers for construction of three commercial buildings and site development.

50. Based on certain loose sheets found during search, the A.O had surmised that the assessee has received cash from the developers as