

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2254 to 2257/Bang/2019
Assessment years : 2011 – 12 & 2013 – 14 to 2015 – 16

Shri. Subhakar Dombayya Kotian, 11, Sant Niwas, 265, Sahid Bhagat Singh Road, Mumbai - 400001. PAN : AEOPK4847D	vs.	DCIT, Central Circle – 1, Mangaluru
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ITA No.2258 to 2264/Bang/2019
Assessment years : 2011 – 12 to 2017 – 18

Shri. M. N. Rajendra Kumar, 1 – 276, PO 721, Pulkeri, Karkala – 574104, Udupi District, PAN : AFOPK5638K	vs.	DCIT, Central Circle – 1, Mangaluru
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ITA No.2457/Bang/2019
Assessment year : 2016 – 17

DCIT, Central Circle – 1, Mangaluru.	vs.	Shri. M. N. Rajendra Kumar, 1 – 276, PO 721, Pulkeri, Karkala – 574104, Udupi District PAN : AFOPK5638K
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ITA No.2334/Bang/2019
Assessment year : 2014 – 15

DCIT, Central Circle – 1, Mangaluru.	vs.	M/s. Om Sai Riddhi Siddhi Developers, Agarwal Trade Centre, Shop No. 154,154, Sector – 11, CBD Belapur, Navi Mumbai, PAN : AACFO4848G
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ITA No.1630/Bang/2019
Assessment year : 2015 – 16

DCIT, Central Circle – 1, Mangaluru.	vs.	Shri. Walter Noronha, “Trupthi” Opp. Chowla Gas Agency, Thumbay, Mangaluru, PAN : ADKPN8607P
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ITA No.2356/Bang/2019
Assessment year : 2016 – 17

DCIT, Central Circle – 1, Mangaluru.	vs.	M/s. Property Infotech India Pvt. Ltd., Door No. 16 – 1 – 32, Rohan Corporation, Balmatta Road, Mangaluru, - 575002. PAN : AAFCP4270P
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ITA No.2357/Bang/2019
Assessment year : 2016 – 17

DCIT, Central Circle – 1, Mangaluru.	vs.	Shri. Rohan Monterio, 16 – 1 – 32, Rohan Corporation, Balmatta Road, Mangaluru, - 575002. PAN : AEXPM8169H
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ITA No.2373 to 2376/Bang/2019
Assessment years : 2014 – 15 to 2017 – 18

Shri. Mohammad Ameer, Behind Moti mall, Sturrock Road, 1 st Cross, Near Taj Mansion House, Falnir, Mangaluru - 575002, PAN : AHDPA2626E	vs.	DCIT, Central Circle – 1, Mangaluru.
APPELLANT		RESPONDENT

&

ITA No.2453 to 2456/Bang/2019
Assessment years : 2014 – 15 to 2017 – 18

DCIT, Central Circle – 1, Mangaluru.	vs.	Shri. Mohammad Ameer, Behind Moti Mall, Sturrock Road, 1 st Cross, Near Taj Mansion House, Falnir, Mangaluru - 575002, PAN : AHDPA2626E
APPELLANT		RESPONDENT
Assessee by	:	Shree K. R. Vasudevan & Smt. Sheetal Borkar, Advocates
Revenue by	:	Shri A. Sreenivasa Rao, CIT (DR) & S/Shri. Tshering Ongda, Manjeet Singh, Addl. CITs (DR)
Date of hearing	:	23.06.2020 & 07.08.2020
Date of Pronouncement	:	24.08.2020

ORDER

Per Bench:

Out of this bunch of twenty-four appeals, there are nine appeals of the revenue in the cases of various connected assesses and the remaining fifteen appeals are filed by three different but connected assesses for various Assessment years as noted above and these are directed against separate respective orders of CIT (A) – 2 Panaji.

2. Oral arguments were raised by both sides on issue basis and therefore, we will decide these appeals on issue basis and for this purpose, we will first take note of the issues involved in these Fifteen (Seven by Shree M. N. Rajendra Kumar for A. Ys. 2011 – 12 to 2017 – 18 and four each by Shree Subhakar Dombayya Kotian for A. Ys. 2011 – 12 and 2013 – 14 to 2015 - 16 and Shree Mohammad Ameer for A. Ys. 2014 – 15 to 2017 – 18) appeals of the assesses and the same is as per the following Chart:-

Issue No.	Issue Description	
<u>1</u>	<u>Alleged Undisclosed Investment in ULWE PLOTS</u>	
ITA No.	Ground No.	Amount
2254	2 to 4	13,06,250/-
2258	2 to 5	39,18,750/-
	Total Amount	<u>52,25,000/-</u>

Issue No.	Issue Description	
<u>2</u>	<u>Alleged Investment in Om Sai Riddhi Siddhi Developers</u>	
ITA No.	Ground No.	Amount
2255	2 to 4	37,50,000/-
2256	2 to 4	127,74,562/-
2257	2 to 4	6,25,000/-
2260	2	11,25,000/-
2261	2	383,23,687/-
2262	2	18,75,000/-
	Total Amount	<u>584,73,249/-</u>

Issue No.	Issue Description	
<u>3</u>	<u>Alleged Investment in M/s K. D. Developers</u>	
ITA No.	Ground No.	Amount
2258	3	1,40,93,500/-
2259	2 to 4	4,45,37,000/-
	Total Amount	<u>586,30,500/-</u>
Issue No.	Issue Description	
<u>4</u>	<u>Alleged Investment in M/s Global Star Realtors (P Ltd.</u>	
ITA No.	Ground No.	Amount
2260	3	1,41,90,000/-
2261	3	345,00,000/-
	Total Amount	<u>486,90,000/-</u>
Issue No.	Issue Description	
<u>5</u>	<u>Alleged Undisclosed Payment to Mr. Jayanti Lal Jain</u>	
ITA No.	Ground No.	Amount
2260	4	1,91,86,765/-
	Total Amount	<u>191,86,765/-</u>
Issue No.	Issue Description	
<u>6</u>	<u>Alleged Cash collected in developed project with PIPL</u>	
ITA No.	Ground No.	Amount
2261	4	2,07,05,000/-
2262	3	5,27,96,670/-
2263	2	3,40,00,004/-
2264	2	23,98,326/-

	Total Amount	<u>10,99,00,000/-</u>
Issue No.	Issue Description	
<u>7</u>	<u>Alleged Cash Receipt on sale of Shares in MA Smart Builders & Developers, Mangaluru</u>	
ITA No.	Ground No.	Amount
2264	3	1,05,00,000/-
	Total Amount	<u>1,05,00,000/-</u>
Issue No.	Issue Description	
<u>8</u>	<u>Alleged Cash Receipt towards Construction of Sahakari Sadan (MA Smart)</u>	
ITA No.	Ground No.	Amount
2373	2	86,00,000/-
2374	2	87,50,000/-
2375	2	885,67,000/-
2376	2	538,55,000/-
	Total Amount	<u>15,97,72,000/-</u>

Issue No.	Issue Description	
<u>9</u>	<u>Alleged Cash Receipt towards Construction of Garden City Project (Hindustan Bawa)</u>	
ITA No.	Ground No.	Amount
2373	2	113,30,000/-
2374	2	219,00,000/-
2375	2	142,56,200/-
2376	2	190,00,000/-

	Total Amount	<u>6,64,86,200/-</u>
Issue No.	Issue Description	
<u>10</u>	<u>Alleged Cash Receipt towards Construction of Oceanic View Project (Mamko Builders)</u>	
ITA No.	Ground No.	Amount
2375	2	157,00,000/-
2376	2	66,19,500/-
	Total Amount	<u>2,23,19,500/-</u>
Issue No.	Issue Description	
<u>11</u>	<u>Alleged Cash Receipt towards Construction of Other Projects</u>	
ITA No.	Ground No.	Amount
2375	2	561,67,500/-
	Total Amount	<u>5,61,67,500/-</u>

3. Now we take note of the issues raised by the revenue in its nine appeals and the same are as per the following Chart:-

Issue No.	Issue Description	
<u>1</u>	<u>Deletion of the Addition made by the AO u/s 69A</u>	
ITA No.	Ground No.	Amount
1630	2	183,00,000/-
	Total Amount	<u>1,83,00,000/-</u>
Issue No.	Issue Description	
<u>2</u>	<u>Deletion of the Protective Addition made by the AO as unexplained Cash Investment</u>	
ITA No.	Ground No.	Amount
2334	2	510,98,250/-

	Total Amount	<u>5,10,98,250/-</u>
Issue No.	Issue Description	
<u>3</u>	<u>Deletion of the Addition made by the AO on Allegation of payment of On Money for 3 Projects</u>	
ITA No.	Ground No.	Amount
2356	2	340,00,004/-
2357	2	580,00,000/-
	Total Amount	<u>920,00,004/-</u>
Issue No.	Issue Description	
<u>4</u>	<u>Deletion on the basis of Retraction of various Additions made by the AO</u>	
ITA No.	Ground No.	Amount
2457	4	7,00,00,000/-
	Total Amount	<u>7,00,00,000/-</u>
Issue No.	Issue Description	
<u>5</u>	<u>Direction of CIT (A) to estimate income @ 8% out of alleged cash receipts as against addition by the AO of the entire amount of cash Receipts Rs. 199.30 lacs in A. Y. 2014 – 15, Rs. 306.50 Lacs in A. Y. 2015 – 16, Rs. 1746.91 Lacs in A. Y. 2016 – 17 and Rs. 794.75 Lacs in A. Y. 2017 – 18</u>	
ITA No.	Ground No.	Amount
2453 to 2456	2	2803.66 Lacs
	Total Amount	2803.66 Lacs

4. After the oral hearing was over, learned AR of the assessee was directed to file brief written submissions containing assessed summary of oral arguments advanced

by presenting these arguments on issue basis to help the bench in dictation of the order because in that situation, no argument will escape the notice of the bench at the time of dictation of the order and it was made clear that the written submission should be without enclosing any new document and without including any argument on the basis of any new document and without including any new argument. The learned AR of the assessee was allowed time to file written submissions up to 29.06.2020 with a copy to the learned DR of the revenue to facilitate reply by him if he so desires and learned DR of the revenue was allowed time to file the reply, if any, up to 06.07.2020 and it was made clear that his reply should contain the summary of the arguments advanced by him orally which was very brief that in respect of the appeals of the assessee, he supports the orders of both the lower authorities and in respect of the appeals of the revenue, he supports the assessment order and it was made clear that he can submit reply to the arguments made by the learned AR of the assessee in his written submissions and he also should file the written submission without enclosing any new document and without including any argument on the basis of any new document and without including any new argument. . Accordingly, learned AR of the assessee has filed the written submissions with a copy to the learned DR of the revenue as admitted by learned DR of the revenue in his letter dated 02.07.2020 filed by him to seek extra time to file reply and this letter is being reproduced by us after reproducing the written submissions filed by the learned AR of the assessee. But learned DR of the revenue sought time for the reply vide letters dated 02.07.2020, 29.07.2020 and 12.08.2020. On earlier two dates i.e. in response to the request for allowing time as per letter dated 02.07.2020 and 29.07.2020, time was allowed by the bench but in spite of this, as per letter dated 12.08.2020, the learned DR of the revenue is submitting that he will file written submissions in the case of Shree Walter Neronha, ITA No. 1630/Bang/2019 within 3 days and filed it on 18.08.2020 but for remaining appeals, he submitted that Excel sheet was not brought on record based on which the addition was made and the same is in the hard disk seized at Mumbai and this hard disk can be opened only in the presence of the assessee or assessee's AR in order to furnish the same before the tribunal and therefore, the assessee should be directed to

extend cooperation to the department to facilitate the production of a cloned copy with a certified copy to ITAT. It is also submitted by him in this letter that further time should be granted to furnish detailed submissions and case may be heard after the full submission is made by the department. As per this last request of the learned DR of the revenue, it appears that he is making this request with this mistaken understanding that hearing of these appeals is not yet over. This submission in this request is also peculiar that some relevant documents are not available with the AO and to obtain those documents, help of the assessee is required and therefore, the assessee should be directed to provide such help and then only, written submissions can be filed by him and thereafter, the appeals should be heard. We fail to understand that if those documents are not with the AO then how in absence those documents, addition was made by the AO which is stated to be on the basis of such seized documents and if addition made by the AO is not based on those documents then how the same is relevant for deciding these appeals. In our considered opinion, as per this last letter of the learned DR of the revenue, it seems that the DR is either confused or he wants to delay the order unnecessarily. Learned DR was only required to file reply to the written submissions filed by the learned AR of the assessee and he was not supposed to bring on record any other material which is not already on record of the tribunal. Hence, we draw this inference that the learned DR of the revenue has nothing to submit in writing in addition to his oral arguments and in reply to the written submissions of the learned AR of the assessee. We will reproduce the letters filed by the learned DR of the revenue seeking time to file written submissions and will also reproduce the written submissions filed by him in respect of one appeal i.e. in the case of Shree Walter Neronha, ITA No. 1630/Bang/2019 and will consider those written submissions and we will also consider the oral arguments advanced by both sides and written submissions filed by the learned AR of the assessee and will decide all these appeals without waiting any more for the written submissions of the learned DR of the revenue in respect of the remaining appeals.

5. We first reproduce the written submissions filed by learned AR of the assessee. The same are as under:-

Sl. No.	A.Y.	ITA No.	Appeal Type	ISSUES
M.N. RAJENDRAKUMAR				
1	2011-12	2258	Assessee	i) 75 % of the Investment in Ulwe Plot Issue No. 1 ii) Investment in KD Developers (given to Deepak Pawar) Issue No. 2
2	2012-13	2259	Assessee	i) Investment in KD Developers Issue No. 2
3	2013-14	2260	Assessee	i) 75 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3 ii) Investment in Global Star Realtors Issue No. 4 iii) Payments made to Jayantilal Jain Issue No. 5
4	2014-15	2261	Assessee	i) 75 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3 ii) Investment in Global Star Realtors Issue No. 4 iii) Cash component collected in projects developed by PIPL (PIPL) Issue No. 6
5	2015-16	2262	Assessee	i) 75 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3 ii) Cash component collected in projects developed by PIPL (PIPL) Issue No. 6
6	2016-17	2263	Assessee	i) Cash component collected in projects developed by PIPL (PIPL) Issue No. 6
7	2017-18	2264	Assessee	i) Cash component collected in projects developed by PIPL (PIPL) Issue No. 6 ii) cash receipts on sale of shares in Smart Builders Issue No. 7
8	2016-17	2457	Revenue	i) Investment in Jewellery Issue No. 8 ii) Unexplained expenditure in Global Exports (building lease) Issue No. 9 iii) Unexplained investment in SS Developers Issue No. 10 iv) Unexplained investment in factory premise of Kusuma Cashew Issue No. 11
9	2017-18	2366	Revenue	unexplained investment in Navodhaya Estate Land Development Issue No. 12
Subhakar Dombayya Kotian				
10	2011-12	2254	Assessee	i) 25 % of the Investment in Ulwe Plot Issue No. 1
11	2013-14	2255	Assessee	i) 25 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3
12	2014-15	2256	Assessee	i) 25 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3
13	2015-16	2257	Assessee	i) 25 % Investment in Om Sai Riddhi Siddhi (OSRS) Issue No. 3

Property Infratech India Pvt. Ltd				
14	2016-17	2356	Revenue	i) Case under Monetary Limit as per CBDT Circular No.17/2019 Issue No. 17
Om Sai Riddhi Siddhi Developers				
15	2014-15	2334	Revenue	i) Unexplained Cash Investment in the firm Issue No. 3
Rohan Monterio				
16	2016-17	2357	Revenue	i) Cash component paid towards development projects Issue No. 6
Walton Noronha				
17	2015-16	1630	Revenue	i) Unexplained money invested in his financial business Issue No. 13
Mohammad Ameer				
18	2014-15	2373	Assessee	i) Cash receipts towards construction of projects Issue No. 14
19	2015-16	2374	Assessee	i) Cash receipts towards construction of projects Issue No. 14
20	2016-17	2375	Assessee	i) Cash receipts towards construction of projects Issue No. 14
21	2017-18	2376	Assessee	i) Cash receipts towards construction of projects Issue No. 14
22	2014-15	2453	Revenue	i) Cash receipt on construction of M/s. M A Smart Projects and Garden City. Issue 15 ii) Investment in Jewellery Issue No. 16
23	2015-16	2454	Revenue	i) Cash receipt on construction of M/s. M A Smart Projects and Garden City. Issue 15 ii) Investment in Jewellery Issue No. 16
24	2016-17	2455	Revenue	i) Cash receipt on construction of M/s. M A Smart Projects and Garden City. Issue 15 ii) Investment in Jewellery Issue No. 16
25	2017-18	2456	Revenue	i) Cash receipt on construction of M/s. M A Smart Projects and Garden City. Issue 15 ii) Investment in Jewellery Issue No. 16

6. The assessee has been actively involved in the cooperative sector and is presently the President of South Canara District Cooperative Bank (SCDCB). The assessee has been involved in various business ventures, which are mostly run by Firms and Companies and the responsibility of the day-to-day operations of the business ventures are with the partners and directors of these companies.

7. Search action u/s 132 of the Act was taken in the residence of the assessee at Pulikeri karkalla, Udipi on 1.2.2017. No incriminating material or any evidence of undisclosed income/ assets/ expenditure was found. Search action was also taken in the flat at Mumbai, which was being used as office premises. During the search action, one Mr. Sanjay was present in the premises whose statement was recorded. He had stated that the premise was being used as office premises for various firms. Therefore, it is clear that the premise was not in direct possession and control of the assessee.

8. In the Mumbai flat, various items comprising Hard disc, computers and papers were seized, which were marked as A1 to A26, the details of which are listed in the assessment order. One of the items seized was a pen drive, belonging to Sanjay in which an excel sheet was found saved. The contents of this excel sheet has been made the basis of additions made in the hands of the assessee.

9. During the course of the search action, a statement u/s 132(4) was recorded from the assessee extracting a confession of undisclosed income. This statement was later retracted by the assessee in the form of a detailed statement, wherein he has explained the circumstances under which the statement u/s 132(4) was recorded and why the statement does not represent the true state of affairs.

I. **General submission on Facts:**

1. No incriminating material, undisclosed income/ assets/ expenditure was found in the Assessee's premises or in his possession or control.
2. The entire assessment and the additions made are towards the alleged cash investment/ receipts in the various business transactions of the firms/ companies in which the assessee is a partner/ director.
3. The additions are based on digital evidence, allegedly stored in a pen drive belonging to a third person or documents found during survey in third party's premises. None of the digital evidences relied upon was in the possession or control of the assessee.
4. No evidence of any on-money exchange in any of the transactions was found and the additions are not corroborated by any shred of evidence.
5. The addition has been made based on the statement recorded during the search action, even though it was subsequently retracted, wherein the circumstances of disclosure and the need for retraction has been explained, in detail. The A.O has merely relied on a statement recorded in duress and denial whereas the A.O has disregarded a statement which has been given after proper verification of facts.
6. The projects were developed by Firms/ companies. However, the alleged cash investment/ receipts have been taxed in the hands of the assessee.

II. Submission on Principles:

1. No addition can be made based on pen drive data, unless there are corroborative evidence. The contents of digital evidence created and stored in a pen drive of a third party cannot be imposed on the assessee, without any corroborative evidence to support the same.
2. Loose documents have no evidentiary value, unless there are corroborative evidence
3. Additions cannot be made, merely based on disclosure statement, unless there are corroborative evidences. Confessions extracted during search proceedings should be supported by collection of evidence of income
4. Additions made based on alleged evidence found in possession of third party / statement of third party, without providing opportunity of cross examination to assessee is not tenable
5. Absence of corresponding entries in the accounts/ confirmation of opposite party makes the addition untenable
6. Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions
7. Survey findings cannot be used for the purposes of S.153A
8. Alleged income of firms/ companies cannot be assessed in the hands of the directors

ISSUE No. 1

Mr. M. N. Rajendra Kumar

A.Y 2011-12 ; ITA No.2258/Bang/2019

Mr. Subhakar Dombayya Kotian

A.Y. 2011-12 ; ITA No.2254/Bang/2019

Cash investment in purchase of plot in Ulwe, Navi Mumbai for projects undertaken by Om Sai Siddhi Riddhi Developers (OSSRD)

Facts of the issue

10. Om Sai Siddhi Riddhi Developers (OSSRD) is a partnership firm in which the assessee and Mr. Kotian are partners, having share of 75 % and 25 % respectively. This firm had constructed three projects, Exotica, Nakshatra and Paradise at Navi Mumbai.

11. By relying on the excel sheet found in the pen drive of Sanjay, the A.O has surmised that there has been payment of cash for purchase of land for these three projects. As corroboration of the excel sheet, the A.O has relied on another loose sheet in A20, which was also found in the same premise and is only a printout taken from the pen drive. (A20 was also the seized record of the same premise, as can be seen from the details of seized records listed in the assessment order). Therefore, both the sheets of documents referred in the assessment order are from the same premise and from the files stored in the pen drive of Sanjay.

12. From the two sheets, the A.O has surmised that the cost of the plots was Rs 2,62,00,000 and since an amount of Rs 2,09,75,000 is shown in the Books of accounts, the balance amount of Rs 52,25,000 has been assessed as the undisclosed investment in the purchase of the plots. Out of this amount of Rs 52,25,000, an amount of Rs 39,18,750, being 75 %, has been assessed in the hands of the assessee and balance 25 % in the hands of Mr. Kotian.

Gist of our submission

- i) Even a cursory look at the documents cited as evidence will show that the documents are unreliable. For instance, as per the assessment order itself, the cash component in the transaction is Rs 52,25,000. But the excel sheet has mentioned an amount of Rs 92,00,000 as cash amount. Also, the A.O has recorded that the sheet mentions the share of the assessee as 50 %, but the A.O has assessed 75% in the Assessee's hands.
- ii) The addition has been made purely on assumptions and presumptions based on the pen drive data, belonging to Mr. Sanjay, without any corroborative evidence.

It is settled principle that digital evidence stored in a pen drive 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 makes 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.
- 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 projects are carried out by the firm and the land purchases were made by the firm. As such, the alleged cash component cannot be taxed in the hands of the partners.

ISSUE No. 2

Mr. M. N. Rajendra Kumar

A.Y 2011-12 & A.Y 12-13 ; ITA No.2258 and 2259/Bang/2019

Cash payments made to Deepak Pawar towards investment in project executed by KD Builders and for other purposes

13. Based on the excel sheet found in the pen drive of Mr. Sanjay, the A.O has surmised that the assessee has made the following cash payments to one Mr. Deepak Pawar, over a period of 2008 to 2011, for the following purposes

i)	Investment in KD Builders	4,45,37,000
ii)	Payment for personal purposes	85,00,000
Hi)	Payment for link road and Vasri hill	55,93,500
	Total	5,86,30,500

14. Out of the above amounts, the amounts at i) of Rs 4,45,37,000 was assessed in A.Y 2012-13 and the amount at ii) and iii) aggregating to Rs. 1,40,93,500 was assessed in A.Y 2011-12.

15. The CIT(A) upheld the additions but held that only those payments related to the year under consideration should be assessed to tax in the relevant year and the payments related to the earlier years were deleted by the CIT(A).

Gist of our submission

- i) The A.O has only stated that details of the cash paid were recorded in the excel sheet found in the pen drive of Sanjay and typed out the details in the order. The actual excel sheet is not brought on record nor was it produced before the assessee, during assessment proceedings. Hence, the document cited is unreliable.
- ii) The addition has been made purely on assumptions and presumptions based on the pen drive data, belonging to Mr. Sanjay, without any corroborative evidence.
- iii) It is settled principle that digital evidence stored in a pen drive 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 and the excel sheet in the pen drive.
- vi) The A.O has not brought on record who the other party is (Mr. Pawar) and verification of the alleged transactions with him
- vii) Burden of proof is on Revenue / Assessing Officer who is making allegations of on money transactions, which has not been discharged
- viii) The A.O had admitted that the project is carried out by the firm and the land purchases were made by the firm. As such, the alleged cash component cannot be taxed in the hands of the partners.

ISSUE No. 3

Mr. M. N. Rajendra Kumar

**A.Y 2013-14, A.Y 2014-15, A.Y 2015-16 ; ITA No.2260,
2261,2262/Bang/2019**

Mr. Subhakar Dombayya Kotian

**A.Y. 2013-14, 2014-15 & 2015-16 ; ITA No.2255, 2256,
2257/Bang/2019**

**M/s. Om Sai Riddhi Siddhi Developers
A.Y. 2014-15 ; 2334/Bang/2019**

Cash investment in purchase of land by OSSRD

16. Om Sai Siddhi Riddhi Developers (OSSRD) is a partnership firm in which the assessee and Mr. Kotian are partners, having share of 75 % and 25 % respectively.

17. Based on the digital evidences in the form of files stored in the pen drive of Sanjay and the copies of the same found as loose sheets, the A.O surmised that an amount of Rs 6,85,98,250 was made as cash investment in the lands purchased for projects executed by OSSRD, This amount was assessed as undisclosed income over various years, as under:

A.Y	Amount	M. N. Rajendra Kumar	Kotian
2013-14	1,50,00,000	1,12,50,000 (Wrongly Mentioned Rs 11,25,000 as in the order	37,50,000
2014-15	5,10,98,250	3,83,23,687	1,27,74,562
2015-16	25,00,000	18,75,000	6,25,000
Total	6,85,98,250	5,14,48,687	1,71,49,562

Gist of our submission

- i) The A.O has made the addition based on surmises and assumptions, based on the excel sheet in the pen drive of Mr. Sanjay, without bringing any corroborative evidence on record.
- ii) It is settled principle that digital evidence stored in a pen drive 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 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 the land purchases were made by the firm. As such, the alleged cash component cannot be taxed in the hands of the partners.

ISSUE No. 4

Mr. M. N. Rajendra Kumar

A.Y 2013-14 & A.Y 2014-15 ; ITA No.2260 and 2261/Bang/2019

Cash investment in purchase of land for projects executed by Global Star Realtors Pvt. Ltd

18. Global Star Realtors Pvt. Ltd is a company in which the assessee is a director. Based on the loose sheets found during survey action in the SCDCC bank, the A.O had surmised that the assessee had made payment of Rs 4,86,90,000 in cash towards purchase of land for the projects executed by the company. This amount was assessed over two years, Rs 1,41,90,000 in A.Y 2013-14 and Rs 3,45,00,000 in A.Y 2014-15.

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.
- Hi) 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. 5

Mr. M. N. Rajendra Kumar

A.Y. 2013-14 ; ITA No.2260/Bang/2019

Cash payment made to the retiring partner Mr. Jayantilal Jain

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

consideration for the various projects constructed by the firms and these amounts as undisclosed income in the hands of this assessee.

Gist of our submission

- i) The A.O has made the addition based on assumptions, based on certain loose sheets, without bringing any corroborative or fresh evidence on record.
- ii) All the books of accounts were audited books of accounts and were uploaded.
- iii) The assessee has uploaded all relevant documents in the e-portal and has also filed its Return of Income in reply to the notice issued u/Section 153C of the Act
- iv) A.O has grossly erred in estimating the income at 8% on the figures noted/mentioned in the note book by multiplying the same some by Rs100 or some by Rs. 1,000/- without any basis.

ISSUE No. 16 - Mohammed Ameer - Revenue appeal

A.Y 2014-15, 2015-16, 2016-17 & 2017-18 ; ITA No.2453, 2454, 2455 & 2456/Bang/2019

Investment in Jewellery

51. Based on certain purchase bills found during search, the A.O had surmised that the assessee has made undisclosed investment in jewellery and added the same in various years, as detailed in the assessment order.

52. However, the CIT(A) deleted the addition by accepting the contention of the assessee that,

- i) No gold was physically found during search, corresponding to the bills, thereby supporting the claim that these were purchased on behalf of family members
- ii) The assessee had sufficient drawings to explain the purchases

53. The decision of the CIT(A) is based on facts and nothing has been brought on record to counter the same.

M/S PROPERTY INFRA TECH INDIA PRIVATE LIMITED
ITA No.2356 /Bang/2019 for the A.Y.2016-17 under Section143(3)
Conformance with the CBDT Circular No.17 of 2019:

54. The Assessee's case falls directly under the CBDT Circular No.17/2019 as the addition made by the Department is to a tune of Rs.24,60,098, thereby keeping it out of the ambit of monetary limit set for appeals to be made by the department.

55. The Assessee brings to your kind notice, the Circular bearing No.17 of 2019 dated 08th August, 2019 wherein the further enhancement of monetary limit for filing of appeals by the Departments before the Income-Tax Appellate Tribunals stands amended, and by the said amendment the earlier monetary limit has been raised to Rs.50,00,000/- (Rupees Fifty Lakhs).

Addition made towards adjustment of cash component in the developed projects

56. Assessee is a company engaged in the real estate business. Consequently, there was a search which was conducted in the premises of Mr. M. N. Rajendra Kumar on 01.02.2017. During the course of search, no incriminating material was found that would bear addition on the assessee's Income.

57. The Assessing Officer has made addition, by relying on Mr. M. N. Rajendra Kumar's statement which he himself retracted later (copies of oath statement is already enclosed in the Paper-book of Mr. M. N. Rajendra Kumar). However, the Assessing Officer had not given an opportunity to the Assessee to cross examine the material used against him, which was also asked by the Assessee during the CIT (A) proceedings and hence, the same is in violation of the Principles of Natural Justice and against the law, as held by Hon'ble Apex Court in the case of Andaman Timber v. CIT (in Civil Appeal No.4228 of 2006) which was also considered by The Hon'ble Tribunal at Delhi in the case

of Bhatia Diamond Pvt. Ltd. (copy enclosed in the Case Law Compendium).

58. Further, it may be noted that the books are audited books of accounts.

59. No independent enquiry with regard to cash paid by the Assessee was done by the Assessing Officer. If cash was paid by the Assessee, the Assessing Officer would have seized that the cash from Global Star Realtors Private Limited's director, Mr. M. N. Rajendra Kumar which was not done for obvious reason that there was no cash component found at all by the Assessing Officer during the course of search carried on in Mr. M. N. Rajendra Kumar, and neither any unaccounted asset. The Assessing Officer had made addition merely on assumption without primary evidence. Further, Assessing Officer also failed to verify with the other party whether he received cash or not.

60. No independent valuation was done by Assessing Officer to state that valuation of project was understated. The Assessing Officer also failed to bring any evidence on record to support of his contention that he paid cash over and above the value declared.

61. Assessing Officer erred in alleging that additional income over and above the consideration was made in cash by director of the assessee company, Mr. Rohan Monteiro to directors of M/s. GSRL purely on assumptions and presumptions.

62. Further, the AO has erred in alleging that Mr. Rohan Monteiro has undertaken the responsibility to sell the flat and pay back the proceeds of the sale to Mr. M. N. Rajendra Kumar and the agreement is entered into by Mr. Rohan Monteiro and Mr. M. N. Rajendra Kumar in fact there is no such agreement at all.

63. The AO failed to make any independent inquiry with the other party where he is in receipt of cash or generation of unaccounted cash receipt/payment as alleged by AO.

64. Further, it was also submitted that no material was found during search or survey to make the addition by the AO. He did the same on presumption basis without any evidence, by relying on statement of Mr. M. N. Rajendra Kumar which was later retracted. Hence, in absence of cogent evidence in support of entries in loose sheet, no adverse conclusion can be drawn. Appreciating the same, the Hon'ble CIT (A) deleted the same in page 16 para 5.13 of his Order.

65. Further, we rely on the case of Common Cause v. Union of India (77 Taxmann.com 245) wherein the Apex Court has held that loose sheets found during the search were inadmissible as evidence.

66. In the case of Devilal Gherilal Shah v. D. CIT ([1995] 52 TTJ (Ahd.)), the Hon'ble Tribunal has held that no name or date was mentioned in the seized document. In such cases, it is very difficult to say that the assessee purchased gold ornaments and therefore, he should be assessed in respect of the amount mentioned therein as unexplained investment by him. In the absence of cogent evidence on record, the addition cannot be sustained.

67. Further, the Mumbai Bench in D. A. Patil v. D. CIT ([2001] 70 TTR (Mum.) 969) held that in case of discovery of sheets of paper disclosing loan given by an assessee and interest due thereon, during search, the assessee could not be saddled with tax liability.

68. The Hon'ble Tribunal at Vishakapatnam in Smt. Bommana Swarna Rekha v. A. CIT ([2005] 147 Taxman 59) observed that a sheet of paper without any name or date was seized at the premises of the husband of

the assessee, using which an addition was made on the hands of the assessee. The Hon'ble Tribunal held that the onus was on the AO to prove that the loose sheet related to the assessee with the help of cogent evidence supporting the same.

69. In the case of A. CIT v. Ravi Agricultural Industries ([2009] 117 ITD 338 (Agra)), it was held by the Tribunal that the Commissioner rightly deleted the additions of the AO, and held that when the Partner had retracted the statement, the AO was to bring relevant cogent material in order to substantiate the additions.

70. The Hon'ble SC in the case of State v. Ganeswara (AIR 1963 SC 1850) has held that in the absence of corresponding entries in the accounts of the opposite party, the transaction made at the hands of the appellant were to be deleted.

71. We would also like to draw the lordship's attention to CBI v. V. C. Shukla (AIR SC 410) where loose sheets were ruled out to have any evidentiary value; and further in Amar feet Singh Bashi (HUF) v. A. CIT (263 ITR (AT) 75 Del) wherein it was also held that noting on loose sheets by itself cannot constitute as evidence.

72. Further, it is also humbly submitted that the onus lies upon the AO to prove that a transaction as stated in the said loose paper. The same concept was adjudicated in the case of Smt. Bommana Swarna Rekha v. A. CIT (147 Taxman 59) wherein the Tribunal held in the favour of the assessee.

73. It is submitted that the presumption of the AO is discretionary and not mandatory or conclusive, and under Section 132 (4A), such presumptions can be rebutted.

74. The Hon'ble Tribunal in Delhi, in the case of Atul Kumar fain v. D. CIT (64 TTJ Del 786) has held that without any independent evidence cannot be considered as a document in proof of investment in house property and accordingly is liable to be ignored.

75. It is most humbly submitted that the department did not unearth any evidence regarding the exchange of cash Further, there was no agreement to sell flats between the assessee and any third party. The AO has failed to prove the existence of any such agreement or show any corroborating transactions.

76. It was also held that evidence found in the premises of a third party cannot be imposed on the assessee without any corroborating evidence, and therefore the additions made in terms of cash component was deleted.

77. Therefore, in light of the assessee's case falling under the monetary limit and the above submissions, it is prayed that departmental appeal against the assessee be dismissed.

Mr. MOHAMMED AMEER

78. Assessee Appeal in ITA No.2373, 2374, 2375, 2376/Bang/2019 for the A.Y.2014-15 to 2017-18 under Section144 r.w.s 153A

79. Department Appeal ITA no 2453, 2454, 2455 and 2456 Bang 2019 A.Y.2014-15 to 2017-18

80. Cash Receipts towards Construction:

The Appellant, an individual, carrying proprietary business under the name and style M/s.Coastal Construction at Mangaluru as a construction contractor for real estate developers. Consequent to the

search and seizure operation under section 132 conducted in the case of Mr.M.N.Rajendra Kumar and others on 1.2.2017, search was also conducted at the residential premises of the Appellant on 2.2.2017. There was a survey under section 133A was also conducted on the appellant's business premises of AH Homes at Presidium Complex, Attavar, Mangalore and M/s.Coastal Construction on 2.2.2017. Once again survey under section 133A was conducted at the said business premises on 8.3.2017. During the course of survey books and documents were also impounded. Accordingly, notices were issued on 20/7/2018 under section 153C in response to the same return were filed on 24/8/2018

81. It is submitted that, though assessee could not reply to notices of AO due to some personnel inconvenience and also to be noted that no fresh evidence was also filed before CIT appeals even Appellant had filed all return of income, audited financial statement and other details were uploaded in portal for his reference

1. Appellant begs to submit that, the Commissioner of Income tax (Appeals) while upholding the additions made has grossly overlooked the fact that, Additions made is purely on assumptions and presumptions based on the loose sheets and AO has multiplied the figures in the loose sheets with multiples of hundreds/thousands, even for transactions made through account payee cheques purely based on the assumptions and presumptions. While multiplying the figures with 100/1000, the AO totally failed to cross verify the same with the third party who have received either cash or cheque payments.
2. The AO merely acted upon on the statement given by the appellant, which was subsequently retracted by him. It was a settled position of law that unless the statement is tested under the cross examination, the same cannot be considered as evidence against the assessee. The AO used the admission made in the statement recorded under section 132(4) of the Act. But the assessing officer failed to note that, admission itself cannot be considered as conclusive evidence against the assessee, unless there is corroborative evidence on record.
3. There is no other evidence on record to prove that, on money is received. The AO, without bringing on record any evidence to prove that, on money is exchanged between the parties, merely harping upon the loose sheet, which cannot be considered as conclusive evidence against the assessee to bring on

money to tax as undisclosed income. The AO is required to bring further evidence on record to show that, actual on money is exchanged between the parties, but literally failed to do so.

4. The AO did not conduct any independent inquiry relating to exchange of money (sale) instead, merely relied upon the statement, which is not correct. Further, there is no proof of origin and destination of on money.

82. The learned CIT (Appeals) has also overlooked the Supreme Court decision relied on by the appellant in the case of State v. Ganeswara (AIR 1963SC1850), wherein the Hon'ble Supreme Court has held that, absence of corresponding entry in the account of the opposite party precludes the alleged transaction.

83. According to the law declared by the Supreme Court, any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence not legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. Furthermore, the Supreme Court has also held that the loose sheets cannot be account books of a party.

84. **Cash Receipts towards Construction (in Dept. Appeal):**

The A.O has made the addition based on assumptions, based on certain loose sheets, without bringing any corroborative or fresh evidence on record. All the books of accounts were audited books of accounts and were uploaded. The assessee has uploaded all relevant documents in the e-portal and has also filed its Return of Income in reply to the notice issued u/Section 153C of the Act.

85. Further, A.O. has grossly erred in estimating the income at 8% on the figures noted/mentioned in the note book by multiplying the same some by Rs100 or some by Rs. 1,000/- without any basis.

86. **Investment in Jewellery (in Dept. Appeal):**

Based on certain purchase bills found during search, the A.O had surmised that the assessee has made undisclosed investment in jewellery and added the same in various years, as detailed in the assessment order.

However, the CIT(A) deleted the addition by accepting the contention of the assessee that,

- i) No gold was physically found during search, corresponding to the bills, thereby supporting the claim that these were purchased on behalf of family members
- ii) The assessee had sufficient drawings to explain the purchases

87. The decision of the CIT(A) is based on facts and nothing has been brought on record to counter the same.

88. Furthermore, we rely on the case of Common Cause v. Union of India (77 Taxmann.com 245) wherein the Apex Court has held that loose sheets found during the search were inadmissible as evidence.

89. Further, the Mumbai Bench in D. A. Patil v. D. CIT ([2001] 70 TTR (Mum.) 969) held that in case of discovery of sheets of paper disclosing loan given by an assessee and interest due thereon, during search, the assessee could not be saddled with tax liability.

90. The Hon'ble Tribunal at Vishakapatnam in Smt. Bommana Swarna Rekha v. A. CIT ([2005] 147 Taxman 59) observed that a sheet of paper without any name or date was seized to the premises of the husband of the assessee, using which an addition was made on the hands of the assessee. The Hon'ble Tribunal held that the onus was on the AO to prove that the loose sheet related to the assessee with the help of cogent evidence supporting the same.

91. In the case of A. CIT v. Ravi Agricultural Industries ([2009] 117 ITD 338 (Agra)), it was held by the Tribunal that the Commissioner rightly deleted the additions of the AO, and held that when the Partner had retracted the statement, the AO was to bring relevant cogent material in order to substantiate the additions.

92. We would also like to draw the lordship's attention to CBI v. V. C. Shukla (AIR SC 410) where loose sheets were ruled out to have any evidentiary value; and further in Amar feet Singh Bashi (HUF) v. A. CIT (263 ITR (AT) 75 Del) wherein it was also held that noting on loose sheets by itself cannot constitute as evidence.

93. Further, it is also humbly submitted that the onus lies upon the AO to prove that a transaction as stated in the said loose paper. The same concept was adjudicated in the case of Smt. BommanaSwarnaRekha v. A. CIT (147 Taxman 59) wherein the Tribunal held in the favour of the assessee.

94. It is submitted that the presumption of the AO is discretionary and not mandatory or conclusive, and under Section 132 (4A), such presumptions can be rebutted.

95. Further, CIT (appeal) has grossly erred in estimating the income at 8% on the figures noted/mentioned in the note book by multiplying the same some by Rs100 or some by Rs 1,000/- without any basis. Hence, it is prayed that, appellant appeals be allowed for the assessment years 2014-15 to 2017-18.

96. Hence, it is prayed that, addition in the hand of appellant to be deleted and appeals filed by the department for the assessment years 2014-15 to 2017-18 be dismissed.

97. Now, we reproduce the written submissions filed by the learned DR of the revenue in the case of Shree Walter Neronha, ITA No. 1630/Bang/2019 and the letters filed by the learned DR of the revenue seeking time to file written submissions in reply to the written submissions filed by the learned AR of the assessee in respect of the remaining appeals. The same are as under:-

“May it please Your Honours

In the present case filed by the department, the Grounds of Appeal as raised by the revenue has been broadly categorised into the following headings:

- (1) Whether in the facts and circumstances and in law of the case, the Ld.CIT(A) erred in deleting addition of Rs.1.83 crores made u/s 69A and failed to appreciate the fact that the addition was made on the basis of the declaration by the assessee in the statement recorded u/s 132(4) of the I.T.Act in respect of financial business and also based on the documents found and seized and further failed to appreciate the fact that the assessee could not substantiate the reasons for retraction of the statement rendered by him u/s 132(4) .*

Submission: The Ld.CIT(A) perused all the records and statements submitted by the assessee and the assessment records and case laws relied on by the assessee and the A.O. On perusal of the same, the Ld.CIT(A) concluded that there is no merit in making additions only based on the statement recorded during the search and loose sheets found when the statement is retracted, and details in the paper are not deciphered, confronted and details written therein established. In view of the above the Ld.CIT(A) deleted the addition made u/s 69A of the Act and on the basis of statement recorded u/s 132(4) of the I.T.Act. The action of the Ld.CIT(A) is not accepted. The A.O. has sent the detailed facts and other statements recorded at the time of search and other case laws and chronological sequence of the events. I am submitting the same for kind consideration of the same and dismissal of the Ld.CIT(A) order.

Conclusion :

In view of the submissions made above, examination of submissions made by the department, the order of the Ld.CIT(A), Panaji is erroneous and bad in law. The Ld.CIT(A) order may be dismissed.

Prayer :

In the wake of the above submissions, it is humbly prayed to dismiss the order of the Ld.CIT(A) and any other order as may please your honours."

Office of the Commissioner of Income Tax (ITAT)-3
Income tax Appellate Tribunal-3, No.51, Behind Jal Bhavan,
1st Cross, 4th 'T' Block East, Tilak Nagar, Jayanagar,
Bangalore-560 041.

F.No.CIT (DR)/ITAT-3/ BNG/2020-21

Dated: 12-08-2020

To

The Assistant Registrar,
Income Tax Appellate Tribunal,
BENGALURU.

Madam,

Sub: Filing of Written Submission ITAT-C Bench Bangalore in the case of
Shri. M.N. Rajender Kumar Group Search related cases - Reg.

Ref: 1) ITA.No.2258-2457 - Sri. M.N.Rajendra Kumar
2) ITA.No.2254-2257 - Sri. Shubhakar Dombayya Kotian
3) ITA.No. 2356 of 2019 Property Infratech India Pvt Ltd
4) ITA.No.2334 of 2019 - M/s Om sai Riddhi Siddhi Developers
5) ITA.No.2357 of 2019 - Sri. Rohan Monterio
6) ITA.No.2373 - 2356 - Sri. Mohammed Ameer
7) ITA.No.1630 of 2019 - Walter Noronha
Ref: 2 This office letter of even no. dated 2-7-2020 & 29-7-2020

Kindly refer to the above.

Written submission in the case of Walter Noronha:

This office has received the report from the field in the case of Walter Noronha ITA. No.1630 of 2019 on 7-8-2020 and written submission will be filed within 3 days in respect of the same.

Written submission in respect of other cases:

The Assessing Officer DCIT, Central Circle, **Mangalore vide his letter dated 31-7-2020** has submitted that the excel sheet was not brought on record based on which the addition was made and the same is in the hard disk seized at Mumbai. The said sealed hard disk can be opened only in the presence of the assessee or assessee's representative in order to furnish the same before the Hon'ble ITAT. In view of the prevailing pandemic situation the assessee's representative has expressed his inability to vest the office to facilitate the opening of the hard disk which contains the evidence.

In view of this, it is requested to issue necessary directions to the assessee to extend his cooperation to the Department to facilitate the production of a cloned copy with a certified hard copy to the ITAT which will be a material evidence to be considered by the ITAT.

Further, it was intimated by the Assessing Officer that during the month of July, he was in home quarantine for 14 days being a primary contact to a person tested positive for Corona. In addition to this, there was a complete lockdown in Dakshina Kannada District from 15.07.2020 to 23-7-2020. Further as per the orders of the competent authority the officers and staff are directed to work on rotation as per the specified roster with minimum staff. In view of this the Officials are reporting for duty only on alternate days subject to the containment zone restrictions. Hence there is an inevitable delay in culling out the details from assessment records, search folders and seized materials in respect of the 24 cases for which the written submissions are called for. The AO has filed the report in the case of Shri. Mohammed Ameer which were subsequently transferred to "A" Bench.

In the circumstances, it is requested to grant further time to furnish the detailed submission and case may be heard after the full submissions are made by the Department in all the cases as issues are interconnected.

Yours faithfully,
(0,...
(PRADEEP KUMAR)
Commissioner of Income tax (ITAT-3), Bangalore.



Bangalore Benches, Bangalore
ब.सं. 779 दिनांक 31/7/20
S.No. Date

आयकर आयुक्त का कार्यालय(आईटीपीटी-3)

Office of the Commissioner of Income Tax (ITAT-1)

आयकर अपीलीय प्राधिकरण -3 Income tax Appellate Tribunal-1,

सं. No.51, जल भवन के पीछे Behind Jal Bhavan,

प्रथम क्रॉस 1st Cross, 4th टी T ब्लॉक Block ईस्ट तिलक नगर East, Tilak Nagar, जयानगर
Jayanagar,

बेंगलूरु Bangalore-560 041.

F.No.CIT(DR)/ITAT-3/ BNG/2020-21

Dated: 29-07-2020

To
The Assistant Registrar,
Income Tax Appellate Tribunal,
BENGALURU.

Sir,

Sub: Request for further time for filing of Written Submission to be made before ITAT-
C Bench Bangalore in the case of Shri. M.N. Rajendra Kumar Group Search related
cases - Reg.

- Ref: 1) ITA.No.2258-2457 - Sri. M.N.Rajendra Kumar
2) ITA.NO.2254-2257 - Sri. Shubhakar Dombayya Kotian
3) ITA.No. 2356 of 2019 Property Infratech India Pvt Ltd
4) ITA.No.2334 of 2019 - M/s Om sai Riddhi Siddhi Developers
5) ITA.no.2357 of 2019 - Sri. Rohan Monterio
6) ITA.No.2373 - 2356 - Sri. Mohammed Ameer
7) ITA.No.1630 of 2019 - Walton Noronha


Ref: 2 This office letter of even no. dated 2-7-2020

Kindly refer to the above.

Vide this office letter cited above, request for two weeks time was made to submit
written submissions in the above cases as report from the Assessing Officer was called for.

The Assessing Officer DCIT, Central Circle, **Mangalore** has sought further time for
giving his report. Hence it is requested to grant further two week's time to file written submission by
the Department.

Yours faithfully,



(PRADEEP KUMAR)
Commissioner of Income tax
(ITAT-3), Bangalore.



ai•IPTN

Office of the Commissioner of Income Tax (ITAT)-3
Income tax Appellate Tribunal-3, No.51, Behind Jal Bhavan,
Ist Cross, 4th 'T' Block East, Tilak Nagar, Jayanagar,
Bangalore-560 041.

F.No.CIT (DR)/ITAT-3/ BNG/2020-21

To Sub: Request time for filing of Written Submission to be made before ITAT-C
Bench Bangalore in Shri. M.N. Rajender Kumar Group Search related cases Reg.
Ref: 1) ITA.No.2258-2457 - Sri. M.N.Rajendra Kumar
2)ITA.NO.2254-2257 - Sri. Shubhakar Dombayya Kotian
3)1TA.No. 2356 of 2019 Property Infratech India Pvt Ltd
4)ITA.No.2334 of 2019 - M/s Om sai Riddhi Siddhi Developers
5)ITA.no.2357 of 2019 - Sri. Rohan Monterio
Sir, 6)ITA.No.2373 - 2356 - Sri. Mohammed Ameer
7)ITA.No.1630 of 2019 - Walton Noronha
** ** * * * * *

The Hon'ble ITAT, Bench - C heard the above mentioned appeals on 23-62020 and directed both the Department and the Assessee's Representative to file a detailed written submission covering mainly the issues related to additions made in the assessments. The written submissions were to be first filed by the Assessee (by 29th June) and then by the Department (by 6th July).

Copy of the assessee's written submission was received in this office on 30-62020. Report on the assessee's submissions has been called for from the Assessing Officer, DCIT, Central Circle, **Mangalore** and is yet to be received. Hence it is requested to grant two weeks time to file written submission by the Department.

Yours faithfully,

(PRADEEP KUMAR) Commissioner of Income tax (ITAT-3), Bangalore.

98. As per the chart of issues in Para 2 above, the bench has noted that the Issue No. 1 is alleged investment of Rs. 52.25 Lacs in ULWE Plots in A. Y. 2011 – 12 and out of this amount, 75% addition is made by the AO in the hands of Sri M. N. Rajendra Kumar and 25% addition is made by the AO in the hands of Sri S. D. Kotian. As per the assessment order for A. Y. 2011 – 12 in the case of Sri S. D. Kotian, in Para 2, it is noted by the AO that the assessee Sri S. D. Kotian is a partner in the firm M/s Om Sai Riddhi Siddhi along with Sri M N Rajendra Kumar and this firm is engaged in the development of Real Estate Projects. In Para 3.1 of the same assessment order, it is noted by the AO that various incriminating materials including digital evidences seized/impounded at the residence of the partner Mr. M N Rajendra Kumar in Mumbai reveals that the firm M/s Om Sai Riddhi Siddhi had purchased three sets of plots for the construction of residential complexes in Navi Mumbai. It is also noted that the real estate projects Exotica, Nakshatra and Paradise sit on these particular pieces of lands. Thereafter, in the same para of this assessment order, the AO has alleged that Evidences conclusively prove that Mr. M N Rajendra Kumar also paid cash for purchase of these lands and as per the seized material, land investment in three project is shown as Rs. 262 Lacs and when the evidence was posed to Mr. M N Rajendra Kumar, he accepted that the cash was indeed paid for the projects. On page 7 of the same assessment order, the AO has further noted that as per the Pen Drive, total investment is clearly written as 3.62 Crores and thereafter, the AO noted that on this account, only Rs. 209.75 lacs is reflected in the books of account of the firm as investment in ULWE Property and thereafter, for the difference of Rs. 52.25 lacs between these two figures Rs. 262 Lacs and Rs. 209.75 lacs, the AO came to the conclusion that this amount is brought to tax as unexplained investment in A. Y. 2011 – 12 and ultimately, he added 25% of Rs. 52.25 Lacs i.e. Rs. 13,06,250/- in the hands of Sri S. D. Kotian and balance 75% Rs. 39,18,750/- in the hands of Sri M N Rajendra Kumar. In ITA 2254/B/2019 filed by Mr. S. D. Kotian and in ITA 2258/B/2019 filed by Mr. M N Rajendra Kumar, only issue raised is about this addition of Rs. 13,06,250/- and Rs. 39,18,750/-. In the written submissions filed by the learned AR of the assessee about this issue, although various

arguments are raised but this argument itself is conclusive in the facts of the present case that since the AO has admitted that land purchases were made by the firm, the alleged cash component cannot be taxed in the hands of the partners and therefore, we first consider the acceptability of this argument and other arguments will be considered in case the assessee does not succeed on this argument. We have noted that as noted by the AO in the assessment order as noted above, the investment in lands in question is reflected in the books of account of the firm. It proves that the owner of these lands in question is the firm and not the partners of the firm. This is also not a finding of the AO that the cash component is paid by the partners out of their own funds by giving a break up of how much is from own source of which partner. Only this much is noted by the AO in Para 3.1 page 4 of the assessment order that Mr. M N Rajendra Kumar has accepted that cash was indeed paid for the projects and thereafter on page 7 of the assessment order, the AO has noted that submission was made before him vide letter dated 18.12.2018 of which relevant portion is reproduced by him in which the assessee has stated that actual investment in this regard is as per the regular books of accounts maintained by the firm and he has not invested any cash as alleged in the notice and request was made that the assessee can obtain confirmation from the vendor and the assessee also requested for the opportunity for cross examination of the vendor but the AO jumped to the conclusion on this basis that the assessee has not produced any material to show that the admission made by the assessee was incorrect in any way other than denying the payments stating that he was under stress. In our considered opinion, even the so called admission as noted by the AO in para 3.1 of the assessment order is this much only that cash payment was indeed made. Even if we accept this admission as sacrosanct, the said cash payment can be added in the hands of the firm and not in the hands of the partners without bringing cogent material on record to show that such cash payment was made by the partners out of their own funds by giving a break up of how much is from own source of which partner. Under these facts, in our considered opinion, addition might have been made in the hands of the firm and not in the hands of the partners and we delete the addition made by the AO in the hands of the partners. We could have directed the AO to make addition in the hands of the firm but by now,

it has become time barred because more than 8 years have elapsed after the end of the relevant assessment year 2011 – 12. This addition is deleted and Issue No. 1 is decided in favour of the assessee.

99. Second issue in the appeals of the assesses as per Para 2 above is about alleged investment in Om Sai Riddhi Siddhi Developers in A. Ys. 2013 – 14 to 2015 – 16 and connected issue is issue No. 2 in the appeal of the revenue as per Para 3 above being deletion of the protective addition of Rs. 510,98,250/- in A. Y. 2014 - 15. It appears that in other two years i.e. 2013 – 14 and 2015 – 16, no appeal is filed by the revenue because of low tax effect because in these two years, total alleged investment was only Rs. 150 Lacs and Rs. 25 Lacs respectively. This issue is raised by the assessee in A. Y. 2013 – 14 to 2015 – 16 in both the cases i.e. Mr. S. D. Kotian and Mr. M N Rajendra Kumar. On Page 17 of the assessment order for A. Y. 2013 – 14 in the case of Mr. S. D. Kotian, it is noted by the AO that total investment in the lands of M/s Om Sai Riddhi Siddhi Developers is Rs. 685,98,250/-. Year wise break up of this alleged cash investment is also noted by the AO on the same page being Rs. 150 Lacs in A. Y. 2013 – 14, Rs. 510,98,250/- in A. Y. 2014 – 15 and Rs. 25 Lacs in A. Y. 2015 – 16. The AO has noted on page 18 of the same assessment order that the partners have admitted the investment in their individual hands and the same is assessed therein in the ratio of 25% in the hands of Mr. S. D. Kotian and 75% in the hands of Mr. M N Rajendra Kumar in each of these three years. Although the AO has referred to several seized materials including digital evidence in this regard but ultimately, the AO has proceeded on the basis of statements which were retracted later on but the retraction was not accepted by the AO. Arguments about this issue are made by the learned AR of the assessee by considering it as Issue No. 3 in the written submissions filed by him before the tribunal as reproduced above. On this issue also, although various arguments are raised by the learned AR of the assessee but this argument itself is conclusive in the facts of the present case that since the AO has admitted that land purchases were made by the firm, the alleged cash component cannot be taxed in the hands of the partners and therefore, we first consider the acceptability of this argument and other arguments will be

considered if the assessee does not succeed on this argument. We find that this is admitted position that the lands in question are owned by the firm M/s Om Sai Riddhi Siddhi Developers and the AO also has made protective addition in the hands of the said firm after making substantive addition in the hands of these two individuals who are partners in the firm with share of 25% Mr. S. D. Kotian and 75% Mr. M N Rajendra Kumar. Since protective addition is made by the AO in the hands of the firm also, this argument is not decisive and therefore, we examine the acceptability of other arguments. This is one of the arguments that this addition is made on surmises and assumptions based on the excel sheet in the pen drive of MR. Sanjay without bringing any corroborative evidence on record. Reliance was placed on the tribunal order rendered in the case of Anil Jaggi vs. ACIT as reported in 168 ITD 612 (Mumbai), copy on pages 1 to 14 of Case Law Compendium. Para 14 of this tribunal order is relevant and the same reads as under:-

“14. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s Lakeview developers. We have perused the facts of the case and the material available on record on the basis of which the addition of Rs. 2.23 crore had been made in the hands of the assessee. We have further deliberated on the material placed on record and the contentions of the ld. A.R to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group. We have perused the print out of the pen drive (Page 42 of APB) and find ourselves to be in agreement with the view of the ld A.R that though against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is mentioned along with the details of the property purchased by him, viz. Flat no.2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipt of „on money”, who had paid the money, to whom the money was paid, date of agreement and who

had prepared the details, as a result whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjani Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjani Hiranandani in his statement recorded on oath in the course of the Search & seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on-money received on sale of flats, which was offered as additional income under Sec. 132(4) and thereafter offered as such for tax in the petition filed before the Settlement commission. We are of the considered view that there is substantial force in the contention of the ld. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjani Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inferences as regards the investment made by the assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for purchase of the property under consideration when pitted against the „market value" fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hands of the assessee. We thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for concluding that the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O as regards payment of "on money" of Rs. 2.23 crore by the assessee for purchase of Flat No. 2501 from M/s Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained. We thus are unable to subscribe to

the view of the lower authorities and set aside the order of the CIT(A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee.”

100. In this case also, the tribunal noted that the genesis of the conclusion of the AO that the assessee had paid “On Money” of Rs. 2.23 Crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an of ex-employee of Hiranandani Group. On page 15 of the same assessment order, the AO noted that the information noted by him on page 14 of the assessment order regarding cash investment of Rs. 685,98,250/- was unearthed in the digital evidence from the back up taken from Sanjay – Pen drive 2. Although the AO has referred to several printed sheets also but on page 23 of the same assessment order, the AO while dealing with the assessee’s claim about loose sheets, has observed that these loose sheets are digital evidences retrieved from computers, pen drive and lap tops. Hence, it is clear that even as per the AO, all the materials on which basis, addition was made by him is digital evidences retrieved from computers, pen drive and lap tops. Hence, in our considered opinion, in the facts of the present case, this tribunal order is applicable. The tribunal also noted in that case that Shree Niranjani Hiranandani in his statement recorded on oath in course of search proceedings has confirmed that the amounts aggregating to Rs. 475.60 Crores recorded in the pen drive were the on – money received on sale of flats which was offered as additional income u/s 132 (4) and thereafter offered as such for tax in the petition filed before settlement commission. In spite of this, the tribunal in that case held that though the material acted upon by the department formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration but the same is falling short of clinching material and deleted the addition in that case. In the facts of the present case which are similar to that case, we respectfully follow this tribunal order and hold that the adverse inference drawn by the AO as regards payment of on money for purchase of various properties in question is not sustainable and we delete the same in the hands of both the partners i.e. Mr. S. D. Kotian and Mr. M N Rajendra Kumar and also in the hands of the firm M/s Om Riddhi Siddhi Developers. Issue No. 2 in the appeals of the assessee as well as issue No. 2 in the appeals of the revenue are decided in favour of the assessee.

101. Third issue in the appeals of the assesses as per Para 2 above is about alleged investment in M/s K. D. Developers. In the written submissions filed by the learned AR of the assessee, his arguments about this issue are contained in the arguments for Issue No. 3 in his submissions. This issue is raised by the assessee in A. Y. 2011 – 12 and 2012 – 13 in the case of Mr. M N Rajendra Kumar. In Para 11.7 on Page 14 of the assessment order for A. Y. 2011 – 12 in the case of Mr. M N Rajendra Kumar, it is noted by the AO that M/s K. D. Builders (KDB) is a partnership firm (PAN : AAIFK9762D) of Mr. M N Rajendra Kumar and Mr. Shrikant N Kotian and this firm owns a land at Liberty Gardens, Malad Mumbai. He further noted that this firm was incorporated Mr. Deepak Pandurang Pawar (DPP) and later Mr. M N Rajendra Kumar (MNR) entered the firm as partner. Then the AO noted that the Balance Sheet of MNR on 31.03.2016 shows that the amount of investment in KDB is Rs. 190.66 lacs and this is a meagre amount as compared to the actual investments made as per evidences gathered. Then he discussed about various digital evidences mainly back up taken from Sanjay Pen drive – 2 and referred to a statement of the Accountant of MNR Mr. Sanjay Yaswant Katalkar (SYK) in which he stated that an agreement was signed on 28.03.2016 with DPP for the Liberty Garden Project, Malad, Mumbai and the approx. value of the project is Rs. 10.19 Crores. Thereafter in Para 11.9 of the same assessment order, the AO noted that during post search proceedings, the assessee submitted copy of agreement signed on 28.03.2016 between DPP and KDB for Rs. 332,47,500/- and observed that in spite of this agreement, the evidences speak differently. In para 11.10 of the same assessment order, the AO referred to the same pen drive of Sanjay and observed that date wise payment to DPP up to 24.10.2011 was Rs. 445.37 lacs and without indicating any basis for saying so, he stated that this cash was paid by Mr. MNR over and above the agreement value of Rs. 332 Lacs. Thereafter in para 11.12 of the same assessment order, the AO talks about payment of Rs. 40 lacs to DPP and states that this payment is of personal nature and also mainly towards the land at Link Road and Wasari Hill. He has noted down date wise details of various payments to DPP. Thereafter the AO has stated about the statement of Mr. MNR u/s 132 (4) in which he accepted about these alleged investments and also noted about the retraction of the

assessee but rejected the retraction by saying that the assessee has not produced any evidence in support of retraction and made additions in these two years. In our understanding, these additions are only on the basis of statement which is later retracted also and asking for evidence in support of retraction is like asking for impossible to prove the negative. The assessee states in retraction that no payment in cash was made by him and there cannot be any evidence about non payment. On this issue also, although various arguments are raised by the learned AR of the assessee but this argument itself is conclusive in the facts of the present case that since the AO has admitted that land purchases were made by the firm KDB, the alleged cash component cannot be taxed in the hands of the partners and therefore, we first consider the acceptability of this argument and other arguments will be considered if the assessee does not succeed on this argument. We find that this is not the case of the AO that the lands in question are owned by the Mr. MNR and not the firm M/s K. D. Builders. Hence, we proceed on this basis that the owner of these lands in question is the firm and not the partners of the firm. This is also not a finding of the AO that the cash component is paid by the partners out of their own funds by giving a break up of how much is from own source of which partner. Only this much is noted by the AO in Para 11.10 to 11.12 of the same assessment order that various cash payments were made to DPP on various dates in respect of Liberty Garden Plot Work, Link Road Plot Work and Vasari Hill Plot and some personal payments without any finding that these cash payments are made by Mr. MNR out of his own sources and not out of the funds of the firm M/s KDB. In our considered opinion, even if it is accepted that some cash payments are made to DPP over and above the agreement value, the said cash payment can be added in the hands of the firm and not in the hands of the partners without bring cogent material on record to show that such cash payment was made by the partners out of their own funds by giving a break up of how much is from own source of which partner. Under these facts, in our considered opinion, addition might have been made in the hands of the firm and not in the hands of the partners and we delete the addition made by the AO in the hands of the partners Mr. MNR. We could have directed to make addition in the hands of the firm but by now, it has become time barred because more

than 7 & 8 years have elapsed after the end of the relevant assessment year 2011 – 12 and 2012 – 13. This addition is deleted and Issue No. 3 is also decided in favour of the assessee.

102. Fourth issue in the appeals of the assesses as per Para 2 above is about alleged investment in M/s Global Star Realtors (P) Ltd. In the written submissions filed by the learned AR of the assessee, his arguments about this issue are contained in the arguments for Issue No. 4 in his submissions. This issue is raised by the assessee in A. Y. 2013 – 14 and 2014 – 15 in the case of Mr. M N Rajendra Kumar. In Para 14 on Page 25 of the assessment order for A. Y. 2013 – 14 in the case of Mr. M N Rajendra Kumar, it is noted by the AO that the assessee Mr. MNR is a director of M/s Global Star Realtors (P) Ltd. (GSRPL). The AO has observed that evidences in respect of cheque and cash payments were found in the office of Mr. MNR during survey u/s 133A on 27.12.2016 over and above the sale consideration in respect of five pieces of land in Kodialabail village, Padavu village purchased by that company. After discussing about various entries in various digital evidences, in Para 14.2 of the same assessment order, the AO summarized the alleged cash payments of Rs. 141.90 Lacs in A. Y. 2012 – 13 and Rs. 345 Lacs in A. Y. 2013 – 14. Thereafter in Para 14.1.1 of the same assessment order, the AO observed again that these cash payments are for the land purchased for its projects by M/s Global Star Realtors Pvt. Ltd. The AO has noted about the admission by the assessee in statement recorded on 16.03.2017 and its retraction vide letter dated 28.07.2018 and 11.10.2018. Thereafter on page 34 of the same assessment order, the AO has noted about this argument of the assessee also that the cash payment if any is made by the concerned company and not by Mr. MNR personally and that the assessee Mr. MNR is not actively involved in the regular operation of the company but the AO brushed aside these arguments by stating that the company is floated by the assessee himself with 90% being the assessee and his family members. The AO made the addition in the hands of Mr. MNR without bringing any cogent material on record to establish that the alleged cash payment is made by the assessee individual out of his personal funds.

103. On this issue also, although various arguments are raised by the learned AR of the assessee but this argument itself is conclusive in the facts of the present case that since the AO has admitted that land purchases were made by the company M/s GSRPL, the alleged cash component cannot be taxed in the hands of the directors or shareholders and therefore, we first consider the acceptability of this argument and other arguments will be considered if the assessee does not succeed on this argument. We find that this is not the case of the AO that the lands in question are owned by the Mr. MNR and not the company M/s GSRPL. Hence, we proceed on this basis that the owner of these lands in question is the company and not the directors of the company. This is also not a finding of the AO that the cash component is paid by the directors out of their own funds by giving a break up of how much is from own source of which director. There is no specific finding of the AO by giving reference to any cogent evidence that these cash payments are made by Mr. MNR out of his own sources and not out of the funds of the company M/s GSRPL. In our considered opinion, even if it is accepted that some cash payments are made over and above the agreement value, the said cash payment can be added in the hands of the company and not in the hands of the directors without bring cogent material on record to show that such cash payment was made by the directors out of their own funds by giving a break up of how much is from own source of which director. Under these facts, in our considered opinion, addition might have been made in the hands of the company and not in the hands of the directors and we delete the addition made by the AO in the hands of the director Mr. MNR. We could have directed the AO to make addition in the hands of the company but by now, it has become time barred in one year i.e. A. Y. 2013 – 14 because more than 6 years have elapsed after the end of the relevant assessment year 2013 – 14. For A. Y. 2014 – 15, although the reassessment of the company is not yet time barred but we do not feel it proper to give such direction to the AO because in spite of this argument made by the assessee before the AO that cash payment if any, is made by the company, the AO has not taken required steps to ensure at least protective addition in the hands of the company and therefore, providing second innings to the AO under these facts is not

proper in our humble opinion. This addition is deleted and Issue No. 4 is also decided in favour of the assessee.

104. Issue No. 5 in the appeals of the assessee as per Para 2 above is about alleged undisclosed payment to Mr. Jayanti Lal Jain (JLJ) Rs. 191,86,765/- as per Ground No. 4 in the appeal filed by Mr. MNR for A. Y. 2013 – 14 and in the written submissions filed by the learned AR of the assessee, arguments on this issue are the arguments in respect of Issue No. 5 as per him. The main argument raised is this that file created and stored in pen drive of a third party or on the basis of loose sheets cannot be the basis of addition without any corroborative evidence to support the same. At this juncture we examine the basis adopted by the AO in respect of this addition. We find that para 14.3 of the assessment order in the case of Mr. MNR for A. Y. 2013 – 14 is relevant in this regard. In this para, the AO has noted that 25% of share of M/s Om Sai Siddhi Developers which belonged to Mr. Jayanti Lal Jain was transferred in favour of Mr. MNR and the amounts paid to JLJ was verified. He has noted that as per the Retirement Deed date 10.09.2012, Rs. 74,13,235/- was paid to JLJ but as per the evidences available which is mainly the pen drive of Sanjay, the total payment made to JLJ is Rs. 209 lacs. The difference worked out is Rs. 134, 86,765/-. It is further noted by the AO that an amount of Rs. 57 Lacs was paid to JLJ for the retirement from the Wadhgar project. Total was worked out at Rs. 191, 86,765/-. On page 38 of this assessment order, the AO noted that this fact was confronted to the assessee and reply was received by the AO and he has reproduced the relevant portion of this reply wherein, the assessee had submitted that the assessee had made no cash payment to JLJ and the assessee had discussed this issue with JLJ and JLJ has also denied about any such receipt. The assessee requested the AO to provide an opportunity to the assessee to cross examine JLJ before the AO to establish the truth. After reproducing the reply, the AO brushed aside it by stating that the assessee has not produced any evidence in this regard and in the absence of any evidence to the contrary of the allegation of the AO, this amount is brought to tax as unexplained expenditure. In our considered opinion, this stand of the AO is like asking for an impossible because the assessee's

stand is this that he had not made any cash payment to JLJ and there cannot be an evidence for negative and the stand of the AO to require the assessee to bring evidence in support of negative is nothing but asking the assessee to do an impossible task. Moreover, the evidence relied upon by the AO is the contents of the pen drive of Sanjay, an employee of the assessee and before us, the learned AR of the assessee has placed reliance on the tribunal order rendered in the case of Anil Jaggi vs. ACIT (Supra). Para 14 of this tribunal order is relevant and the same is already reproduced in para 9 above and it is discussed in Para 10 above that this tribunal order is applicable in the facts of the present case and Issue No. 2 was decided in favour of the assessee by respectfully following this tribunal order as per Para 10 above. On the same line, for issue No. 5 also, we respectfully follow this tribunal order and decide this issue also in favour of the assessee. Accordingly, Issue No. 5 is also decided in favour of the assessee.

105. Issue No. 6 in the appeals of the assessee as per Para 2 above is about alleged cash collected in developed projects with PIPL Rs. 207.05 lacs in A. Y. 2014 – 15, Rs. 527,96,670/- in A. Y. 2015 – 16, Rs. 340,00,004/- in A. Y. 2016 – 17 and Rs. 23,98,326/- in A. Y. 2017 – 18 in the appeals filed by Mr. MNR for these years and in A. Y. 2016 – 17 in appeals filed by the revenue in the case of M/s Property Infotech India Pvt. Ltd. and in the case of Shree Rohan Monterio. In the written submissions filed by the learned AR of the assessee, arguments on this issue are the arguments in respect of Issue No. 6 as per him. The main argument raised is this that file created and stored in pen drive of a third party or on the basis of loose sheets cannot be the basis of addition without any corroborative evidence to support the same. At this juncture we examine the basis adopted by the AO in respect of this addition. We find that para 14 of the assessment order in the case of Mr. MNR for A. Y. 2014 – 15 is relevant in this regard. In this para, the AO has noted relevant facts about MI CASA Project and he noted that M/s PIPL and M/s GSRL entered into MOU on 10.06.2013 for the development of 44 cents of land situated at Mangalore and as per this MOU, M/s PIPL agreed to pay monetary consideration of Rs. 4.4 Crores to M/s GSRL for taking over of

its undivided rights in the said property for the proposed project of Multi Story apartment called as MICASA.

106. In the same para, the AO discussed about another project named VENTURA Project and noted that similarly a MOU was signed on 30.11.2013 between the same two companies for the development and construction of a multi story apartment on 51.75 cents of land at Mangalore for Rs. 3.93 Crores.

107. In the same para, the AO discussed about another project named PREMIERO Project and noted that similarly a MOU was signed on 08.05. 2014 between the same two companies for the development and construction of a multi story apartment for Rs. 8 Crores and a supplementary agreement for MOU dated 26.10.2015 was executed to reduce the monetary consideration payable by M/s PIPL as Rs. 4 Crores instead of Rs. 8 Crores. He noted that these agreements were found and impounded in survey conducted u/s 33A on 01.02.2017. He also noted that this is a property held in the individual name of M/s GSRL and as per the MOU, the amount is payable by M/s PIPL. As per these facts noted by the AO in the assessment order, these three projects are being developed by two companies jointly i.e. M/s PIPL and M/s GSRL and in subsequent paras, the AO discussed about various digital evidences about receipt of cash of Rs. 1099 lacs in respect of these three projects and finally on page 67 of the same assessment order, he noted year wise and project wise break up the alleged receipt of cash in respect of these three projects which shows that in A. Y. 2014 – 15, the receipt was of Rs. 207.05 Lacs including Rs. 127.35 lacs for MICASA Project and Rs. NIL for PRIMERIO Project and Rs. 80.50 Lacs for VENTURA Project. Similarly, he noted that in A. Y. 2015– 16, the receipt was of Rs. 527,96,670/- including Rs. 169.80.80 lacs for MICASA Project and Rs. 116,66,670/- for PRIMERIO Project and Rs. 241.50 Lacs for VENTURA Project. Similarly, he noted that in A. Y. 2016– 17, the receipt was of Rs. 340,00,004/- including Rs. 42.85 lacs for MICASA Project and Rs. 140,00,004/- for PRIMERIO Project and Rs. 157.15 Lacs for VENTURA Project. For A. Y. 2017 – 18, he noted that the alleged receipt is only Rs. 23,98,326/- for PRIMERIO Project. This fact is admitted by the AO also that these three projects are owned and developed by

two companies as per various MOUs and therefore, even if some money in cash was received in respect of sale of these projects, income will be of these two companies in their agreed share but by no stretch of imagination, it can be considered as income of an individual i.e. Mr. MNR. Hence the addition made in the hands of MR. MNR is deleted for this reason alone and we do not discuss and examine other various arguments of both sides.

108. Now we discuss and decide Issue No. 3 in two appeals of the revenue for A. Y. 2016 – 17 i.e. in the case of M/s PIPL and Mr. Rohan Monerio. In para 5.1 of the order of CIT (A) in the case of the company M/s PIPL, it is noted by CIT (A) that the AO has stated in the assessment order that the assessee company is carrying on business of builders and developers and noted that in course of survey, certain incriminating material was found and impounded in the form of loose sheets pertaining to three projects viz. MICASA, VENTURA and PREMIRO of the assessee company M/s PIPL and M/s GSRL wherein Mr. MNR is managing director. The AO also noted that as per such material, consideration over and above the agreement value of these three projects was paid by M/s PIPL and the AO added Rs. 340,00,004/- in the hands of M/s PIPL in A. Y. 2016 – 17 by alleging that this much cash was paid by M/s PIPL for these three projects. As per para 5.13 of his order, learned CIT (A) deleted this addition by holding that an opportunity of cross examination was not allowed by the AO and unless such an opportunity is given, the addition cannot be sustained. He has given a categorical finding in this para that the addition was made only on the basis of statement recorded during the search of Mr. MNR which he retracted later vide his letter dated 28.07.2018. Learned CIT (A) held that in the absence of any cogent evidence and corroboration in support of entries in loose sheets, no adverse conclusion can be drawn against the assessee and on this basis, this addition was deleted by CIT (A) and the revenue is in appeal before the tribunal. This finding of CIT (A) could not be controverted by the learned DR of the revenue. This is a settled position of law by now that in the absence of cross examination, the adverse statement cannot be a basis of addition and loose sheets alone in the absence of corroboration in support of entries in loose sheets also

cannot be a basis of addition. In the present case of M/s PIPL, the addition was made by the AO on the basis of statement of Mr. MNR and some loose sheets and the AO has not provided the opportunity of cross examination and did not bring on record any material for corroboration in support of entries in loose sheets and therefore, on this issue, we find no infirmity in the order of CIT (A) as per which CIT (A) deleted the addition in the hands of the company M/s PIPL.

109. Now we decide the appeal of the revenue in the case of Shree Rohan Monterio. In para 5.4 of his order in the case of Shree Rohan Monterio (RM) for A. Y. 2016 – 17, it is noted by him that the AO added an amount of Rs. 580 lacs by giving a finding that Shree Rohan Monterio is M. D. of the company M/s PIPL. The AO has also noted that Mr. RM has sold Kadri Property and in addition to the agreed sale consideration of Kadri Property, cash component of Rs. 580 lacs was adjusted against cash component payable for the same three projects i.e. MICASA Project, PRIMERIO Project and PRIMERIO Project. In Para 5.15 of his order, learned CIT (A) has noted about various judicial pronouncements cited before him by the learned AR of the assessee and these judgments included the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. IBC Knowledge Park (P) Ltd., 69 Taxman.com 108. In para 5.16 of his order, learned CIT (A) decided this issue in favour of the assessee by following these judgments included the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. IBC Knowledge Park (P) Ltd. (Supra). In para 5.17 of his order, this finding is also given by CIT (A) that evidence found in the premises of third party cannot be imposed on the assessee without any corroborative evidence by the AO. He also observed that both the parties i.e. the searched party Mr. MNR and the assessee Mr. RM have denied having exchanged the on money and he held that loose sheets alone in the absence of corroboration in support of entries in loose sheets cannot be a basis of addition. These findings of CIT (A) could not be controverted by the learned DR of the revenue. This is a settled position of law by now that in the absence of cross examination, the adverse statement cannot be a basis of addition and loose sheets alone in the absence of corroboration in support of entries in loose sheets also cannot be a

basis of addition. In the present case of Mr. RM, the addition was made by the AO on the basis of statement of Mr. MNR and some loose sheets and the AO has not provided the opportunity of cross examination and did not bring on record any material for corroboration in support of entries in loose sheets and therefore, on this issue, we find no infirmity in the order of CIT (A) as per which CIT (A) deleted the addition in the hands of Mr. RM.

110. As per above discussion, all aspects of issue no. 6 in the appeals of the assessee and issue no. 3 in the appeals of the revenue are decided in favour of the assessee.

111. Issue No. 7 in the appeals of the assessee as per Para 2 above is about alleged cash receipt on sale of shares in the company M/s MA Smart Builders & Developers, Mangaluru in A. Y. 2017 – 18 Rs.105 Lacs the appeals filed by Mr. MNR. In the written submissions filed by the learned AR of the assessee, arguments on this issue are the arguments in respect of Issue No. 7. In Para 14 of the relevant assessment order, the AO has noted that the assessee Mr. MNR sold several of his interests in the commercial property developed by M/s MA Smart Developers (MASD) to Mrs. Mubeena Banu in which he is a partner. Then the AO has stated that the agreement value for this property is Rs. 354,97,500/- as per copy of agreement found and impounded during survey u/s 133A in the case of SCDCC Bank Ltd. on 27.12.2016. The AO further noted that in the copy of impounded document, an amount of Rs. 105 Lacs was written in addition to Rs. 95 Lacs which was received through Cheque. Then he referred to the statement of one Mr. Rajesh Poojary who stated that this is cash receipt in addition to cheque receipt of Rs. 95 lacs. The AO also referred to the statement of Mr. NBR in which as per the AO, he confirmed that Rs. 105 Lacs received is in the form of cash as on money and he agreed that this will be offered as additional income in A. Y. 2017 – 18. The AO reproduced the relevant portion of the statement of Mr. MNR in which, he made a declaration of this amount of Rs. 105 Lacs but from this statement, this is not clear that whether the offer of Mr. MNR was as income of the firm or his individual income but since, this is admitted position that the property in question is developed by the firm MASD, the income on account of receipt of on money, if any,

will be of that firm only and not of the partner of the firm. In our considered opinion, this addition is not sustainable for two reasons. First reason is this that when the property sold is owned by the firm, the income on account of receipt of on money, if any, will be of that firm only and not of the partner of the firm. The second reason is this that the addition was made by the AO on the basis of the statement of the supervisor and material impounded during the course of survey conducted at the head office of SCDCC Bank on 27.12.2016 without bringing on record any material for corroboration in support of entries in loose sheets or digital evidence. Hence, the receipt of on money itself is not established beyond doubt. The value as per agreement is said to be Rs. 354,97,500/- and alleged receipt is only Rs. 200 Lacs i.e. Rs. 95 Lacs by cheque and Rs. 105 lacs by cash and hence, total alleged receipt is much less that value as per the agreement. Under these facts and in view of this discussion, we decide this issue No. 7 also in favour of the assessee.

112. Issue No. 8 in the appeals of the assessee as per Para 2 above is about alleged cash receipts towards construction of Sahakari Sadan (MA Smart) of Rs. 86 lacs in A. Y. 2014 – 15, of Rs. 87.50 lacs in A. Y. 2015 – 16, of Rs. 885.67 lacs in A. Y. 2016 – 17 and Rs. 538.55 Lacs in A. Y. 2017 – 18 in the case of Shree Mohammad Ameer. Issue No. 9 in the appeals of the assessee as per Para 2 above is about alleged cash receipts towards construction of Garden City Project (Hindustan Bawa) of Rs. 113.30 lacs in A. Y. 2014 – 15, of Rs. 219 lacs in A. Y. 2015 – 16, of Rs. 142,56,200/- in A. Y. 2016 – 17 and Rs. 190 Lacs in A. Y. 2017 – 18 in the case of Shree Mohammad Ameer. Issue No. 10 in the appeals of the assessee as per Para 2 above is about alleged cash receipts towards construction of Oceanic View Project (Mamko Builders) of Rs. 157 lacs in A. Y. 2016 – 17 and Rs. 66,19,500/- in A. Y. 2017 – 18 in the case of Shree Mohammad Ameer. Issue No. 11 in the appeals of the assessee as per Para 2 above is about alleged cash receipts towards construction of Other Projects of Rs. 561,67,500/- in A. Y. 2016 – 17 in the case of Shree Mohammad Ameer. Another connected issue is issue No. 5 in the appeals of the revenue and this issue is this that as per the revenue, CIT (A) was not justified in directing the AO to restrict the addition to the extent of

only 8% of the alleged cash receipts in these four years in the case of the same assessee Mr. Mohammad Ameer. We take up these four issues in the appeals of the assessee and one issue in the appeals of the revenue together as facts and arguments are similar. Regarding Issue No. 8, para 5.3.7 of the order of CIT (A) for A. Y. 2014 – 15 in the case of Shree Mohammad Ameer is relevant because in the remaining years also, the finding and decision of CIT (A) is identical and therefore, we reproduce this para for ready reference. Similarly, regarding Issue No. 9, 10 and 11, para 5.4 to para 5.4.8 of the order of CIT (A) for A. Y. 2016 – 17 in the case of Shree Mohammad Ameer is relevant because in the remaining years also, the finding and decision of CIT (A) is identical and therefore, we reproduce these paras also for ready reference. These are as under:-

“5.3.7. I have considered the facts of the case and case laws as well as board circular relied on by the AR. The fundamental issue is that since appellant did not appear before the AO, therefore, the entire receipt of contract had to be charged to tax, in the absence of explanation by the appellant. I find that the basis for multiplying the figures by 100 and 1000 is not validly delineated. No Enquiries in this regard have been conducted. The logic for multiplying the figures, even those of cheques, is improper. Perhaps, this emanates for the statement of the accountant Shri. Makeem, in which case he should have been allowed to be cross examined. If it emanates from the statement recorded during search of the appellant, then he has in effect retracted it; AO has failed to explain why the retraction is inadmissible, specially in the face of the evidence gathered which is claimed to have zeros missing; but this conclusion is not based on valid gathering of evidence as the accountant Shri. Makeem has not been cross examined. The principles of natural justice have also been violated, in the sense that the cross examination opportunity has not been provided. Besides, receipt by cheque have been treated as being at par with receipt by cash without providing the reason thereof. Hence, there is no merit in making additions based merely on the verbal statement, which have since been in effect retracted. On the other hand, I find that, the appellant is a contractor. He is not the developer of the buildings himself. Even in his disclosure during search, he has disclosed the said "receipts", not income. Thus, the receipts on account of the project, even if unaccounted, are contract receipts, on which tax could be levied on the income, not on receipts. It would not be out of context to point out here that level of evidence required is preponderance of probabilities. Thus, based on the evidence available, the AO is directed to compute turnover, after deleting the

accounted (cheque) amount from the above said amount. Income there from could be computed @ 8% on the said amount. Credit should be given from this income so computed of the income declared in the returns on account of these projects declared in any year, if these receipts are included therein. In the result, the appeal is partly allowed on this issue.”

“5.4. I now proceed to decide the ground in respect of additions made of cash receipts from following projects viz.,

- a) Garden City Project — M/s.Hindustan Bawa Rs. 1,42,56,200*
- b) Oceanic View Project — Namko Builder Rs.1,57,00,000*
- c) Other Projects Rs. 5,61,67,500*

5.4.1. The AO in the order of assessment has made above three additions based on the loose sheets impounded during the survey conducted at M/s. Coastal Construction, proprietary concern of the appellant, based on the said loose sheets, and also based on the declaration in the statement recorded during the survey conducted under Section 133A of the Income tax Act.

5.4.2. Further, AO while making addition of Rs.5,61,67,500/- as cash receipts from other projects, has multiplied the figures in the loose sheets, especially copies of the impounded materials at page numbers 1-13 and 17 vide document No.A/AAH/06 by observing that, details of cash receipts were with respect of various projects. The AO further suspected that some of the entries were made in code words- by virtue of these code words the Appellant has deliberately reduced two decimals of number. Finally, while concluding assessment she has stated that, only cash receipts brought to tax and the fact that, cash payments are originate from these receipts no disallowance is called for as the payments are also not brought to the books as detected hence, appellant also not given the benefit of claiming the expenses against the receipts since the expenses invariably calls for a disallowance u/s.40A(3) and 40a(ia) of the Act.

5.4.3. On the other hand, in the AR's written submissions dated 09.09.2019. the AR has forcefully argued in respect of entire cash receipts based on the loose sheets impounded during survey, which is as under.

- AO is not correct in coming to the conclusion that. on money is exchanged between the parties based on a loose sheet found in the premises of M/s.Coastal Construction.*
- To sustain the addition, the AO should have conducted an independent inquiry about the value of the project and ascertain whether any under valuation is done, if so what is the correct value of the project.*

- *Further, the AO did not bring on record any evidence to support her contention to say that there is on-money exchanged between the parties. In the absence of proper inquiry and sufficient evidences, there is no reason to confirm addition made by the AO towards on money.*
- *The AO merely acted upon the statement given by the appellant, which was subsequently retracted by him, It was a settled position of law that unless the statement is tested under the cross examination, the same cannot be considered as evidence against the assessee.*
- *The AO used the admission made in the statement recorded under section 132(4) of the Act. But, the AO failed to note that, admission itself cannot be considered as conclusive evidence against the assessee, unless there is corroborative evidence on record.*
- *To tax any particular receipts, primary evidence is very much necessary and unless there is primary evidence, circumstantial evidence cannot be considered as conclusive evidence against any person to tax any particular receipts. Circumstantial evidence plays an important role in income tax proceeding. But the receipt of on money is purely a factual issue which cannot be decided based on circumstantial evidence.*
- *The AO without bringing on record any evidence to prove that, on money is exchanged between the parties, merely discussing upon the loose sheet, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income.*
 - *The AO is required to bring further evidence on record to show that, actual on money is exchanged between the parties. but literally failed to do so.*
 - *The AO did not conduct any independent inquiry relating to the value of the project instead, merely relied upon the statement, which is not correct.*
 - *The AO made additions purely on assumptions and presumptions.*
 - *The AO in the absence of any cogent evidences and corroboration in support of the entries in loose sheets no*

adverse conclusion can be drawn against the Appellant on mere guess and pure suspicion.

- *Further. there is no proof of origin and destination of on money. The AO failed to prove how the money was arranged and also failed to prove the deployment of unaccounted money by the payer by any form of evidence. Under these circumstances, based on paper jottings as conclusive evidence on money cannot be brought to tax as income from undisclosed sources.*

5.4.4. Finally, during the appellate proceedings, the AR has produced before me the following decisions and argued that, these decisions are squarely applicable to appellant's case.

- 1. Common Cause (A Registered Society) Vs. Union of India [2017] (77 [Taxmann.com](#) 245) (SC).*
- 2. CIT Vs. P.V. Kalyansundaram (164 Taxman 78) (SC).*
- 3. Principal CIT, Central Vs. Krutika Land (P) Ltd. (2019) 103 [Taxmann.com](#) 9 (SC).*
- 4. CIT, Bangalore Vs. IBC Knowledge Park (P) Ltd. (69 [Taxmann.com](#) 108 (Kar).*
- 5. CIT, Central — III Vs. Lavanya Land (P) Ltd. (83 [Taxmann.com](#) 161) (Bombay).*
- 6. CIT, Central — III Vs. Arpit Land (P) Ltd. (78 [Taxmann.com](#) 300)(Bombay).*

5.4.5. I have considered the facts of the case and case laws as well as board circular relied on by the AR, the ratio laid down in the said cases are applicable to the appellant's case.

5.4.6. The AO merely acted upon on the statement given by the accountant Mr. Makeem, which was subsequently retracted by him. It is a settled position of law that unless the statement is tested under the cross examination, the same cannot be considered as evidence against the assessee. The AO also used the admission made in the statement recorded under section 132(4) of the Act. But, the assessing officer failed to note that, admission itself cannot be considered as conclusive evidence against the assessee, unless there is corroborative evidence on record; besides, the appellant has in effect retracted this statement as well.

5.4.7. To tax any particular payments, primary evidence is necessary and unless there is primary evidence, circumstantial evidence cannot be considered as conclusive evidence against any person to tax any particular payments. Circumstantial evidence plays an important role in income tax

proceeding. The payment/receipt of on money is purely a factual issue which cannot be decided based on circumstantial evidence.

5.4.8. I have considered the facts of the case and case laws as well as board circular relied on by the AR. The fundamental issue is that since appellant did not appear before the AO, therefore, the entire receipt of contract had to be charged to tax, in the absence of explanation by the appellant. I find that the basis for multiplying the figures by 100 and 1000 is not validly delineated. No Enquiries in this regard have been conducted. The logic for multiplying the figures, even those of cheques, is improper. Perhaps, this emanates from the statement of the accountant Shri. Makeem, in which case he should have been allowed to be cross examined. If it emanates from the statement recorded during search of the appellant, then he has in effect retracted it; AO as failed to explain why the retraction is inadmissible, specially in the face of the evidence gathered which is claimed to have zeros missing; but this conclusion is not based on valid gathering of evidence as the accountant Shri. Makeem has not been cross examined. The principles of natural justice have also been violated, in the sense that the cross examination opportunity has not been provided. Besides, receipt by cheque have been treated as being at par with receipt by cash without providing the reason thereof. Hence, there is no merit in making additions based merely on the verbal statement, which have since been in effect retracted. On the other hand, I find that, the appellant is a contractor. He is not the developer of the buildings himself. Even in his disclosure during search, he has disclosed the said "receipts", not income. Thus, the receipts on account of the project, even if unaccounted, are contract receipts, on which tax could be levied on the income, not on receipts. It would not be out of context to point out here that level of evidence required is preponderance of probabilities. Thus, based on the evidence available, the AO is directed to compute turnover, after deleting the accounted (cheque) amount from the above said amount. Income there from could be computed @ 8% on the said amount. Credit should be given from this income so computed of the income declared in the returns on account of these projects declared in any year, if these receipts are included therein. In the result, the appeal is partly allowed on this issue."

112. Now the first aspect to be decided is this as to whether extra amount was received by this assessee or not in respect of these projects. If it is found that there was no such receipt then there cannot be any addition but if it is found that extra receipt was there then we have to decide the quantum of such receipts and how much is taxable out of such extra receipts. Regarding the first aspect as to whether extra cash receipt was there or not, we find that on pages 9 to 11 of the assessment order for A. Y. 2014 – 15 and

A. Y. 2016 - 17, the AO has noted the entries found in seized material and these entries are of cash and cheques both with dates. This is not the case of the assessee that these cheques are not received by him. If entries in the seized material about cheque receipts are correct then cash receipt noted on same documents should also be considered as correct. Hence, we hold that in the facts of the present case, extra cash was in fact received by the assessee for all these four years as alleged by the AO in all these four years.

113. Now the second aspect is about quantum of such receipts. The AO has worked out the figures by multiplying the noted figures by 100 and 1000. On this aspect, this is the finding of CIT (A) in these paras reproduced above that the basis for multiplying the figures by 100 and 1000 is not validly delineated and he finally directed the AO to consider such receipts as unaccounted turnover without any multiplication and to compute unaccounted turnover based on the evidence available after deleting the accounted cheques. In our considered opinion, the AO has been directed by CIT (A) to consider the cash receipt entries and unaccounted cheque entries if any as it is without multiplying it by 100 or 1000 and this finding and direction of CIT (A) has no infirmity because for such multiplication by 100 or 1000, no valid basis is given by the AO in the assessment order. Hence, we approve this finding of CIT (A) that unaccounted receipt is unaccounted turnover in respect of these projects and it should be computed by the AO by considering the entries in the seized materials about cash receipts by taking the noted figures as it is without any multiplication and if any entry about receipt of cheque is found as unaccounted then the amount of such cheques should also be added in unaccounted turnover without any multiplication.

114. Now the third aspect is about quantum of to be brought to tax in respect of such unaccounted turnover. This is the issue no. 5 in the appeals of the revenue. Learned CIT (A) has held that 8% of such unaccounted turnover should be considered as income and from that, the income declared in the returns on account of these projects in respective year should be reduced and only the balance should be brought to tax. On the second aspect about reducing the income declared in the returns on account of these projects in

respective year from the income to be computed in respect of unaccounted turnover, we find no infirmity in the order of CIT (A) and we confirm the same.

115. Now the only aspect remains to be decided by us is about the percentage of unaccounted turnover to be considered as income. The AO has added the whole amount of alleged cash receipts but the CIT (A) held that only estimated income out of such alleged cash receipts can be added. In our considered opinion, the alleged cash receipts is unaccounted turnover only and 100% of turnover cannot be said to be income even in respect of unaccounted turnover and hence, we hold that there is no merit in this issue no. 5 raised by the revenue in its four appeals filed in the case of Mr. Mohammad Ameer.

116. Learned CIT (A) has directed the AO to compute the income @ 8% of unaccounted turnover. Although no basis is indicated by CIT (A) for adopting 8% rate but it appears to us that he has been guided by the provisions of section 44AD of I T Act but the provisions of this section are applicable only in those cases, where the annual turnover is below a specified amount. In the present case, turnover is much higher and therefore, the rate specified in this section cannot be adopted. We find that on page 14 of his order for A. Y. 2015 – 16 and 2016 – 17 both, learned CIT (A) has noted the percentage of Net Profit declared by the assessee during A. Ys. 2011 – 12 to 2018 – 19 and that is in the range of 1.29 to 7.04 and average is 3.07 %. This is not the case of the AO that the income declared by the assessee as per books is lower and it is seen that no addition is made by the AO by alleging that the Net Profit declared by the assessee in respect of accounted turnover is less. Under these facts, we feel that adopting 3% profit rate will meet the ends of justice in the facts of the present case and therefore, we direct the AO to adopt 3% rate to compute net profit on unaccounted turnover to be worked out by him in respect of these projects. Accordingly, Issue No. 8 to 11 in the appeals of the assessee and issue no. 5 in the cross appeals filed by the revenue in the case of Shree Mohammad Ameer for four assessment years i.e. A. Y. 2014 – 15 to 2017 – 18 are decided partly in favour of the assessee and the relevant grounds raised

by the assessee are partly allowed and all grounds raised by the revenue in these four appeals are dismissed.

117. Now we find that all 11 issues in the appeals of the assessee as noted in para 2 above are decided and out of 5 issues involved in the appeals of the revenue, three issues i.e. Issue No. 2, 3 and 5 are also decided and we have to decide now Issue No. 1 and 4 in the appeals of the revenue as noted in Para 3 above. First, we take up the issue No. 1 as noted in Para 3 above and this issue is raised by the revenue in the case of Shree Walter Noronha for A. Y. 2015 – 16 in ITA No. 1630/Bang/2019 and this is about deletion of addition made by the AO of Rs. 183 lacs added by the AO under section 69A. On this issue, learned DR of the revenue supported the order of AO and written submissions are also filed by as reproduced above and learned AR of the assessee supported the order of CIT (A)

118. We have considered the rival submissions and we find that Para 6.7 of the order of CIT (A) in this case is relevant and hence, we reproduce the same for ready reference as under:-

“6.7 I have considered the facts of the case and case laws as well as board circular relied on by the AR, the ratio laid down in the said cases are applicable to the appellant's case. The case laws relied on by the AO is not applicable to this case, which is more clearly stated in para supra. Considering all the aspects, I hold that, retraction cannot be countered unless there are other supportive evidence. I find that no serious effort has been made to trace the persons named in the loose paper beyond merely asking the appellant to provide the address. The details written on the loose sheet have not been properly deciphered. It is not established as to what they stand for. In the absence of these deciphering and unearthing of meaning and correlation and understanding the mathematics and the meaning of the transactions entered in the loose sheet, all of which may perhaps have been attempted by the AO, but without success. Hence, there is no merit in making additions only based on the statement recorded during the search and loose sheets found when the statement is retracted, and details in the paper are not deciphered, confronted and details written therein established. Therefore, I have no option but to delete the additions amounting to Rs.1,83,00,000/-. This covers Ground no.1 to 6.”

119. We find that in the above para, a categorical finding is given by the learned CIT (A) that no serious effort has been made by the AO to trace the persons named in the loose paper beyond merely asking the assessee to provide the address. This is also a finding of CIT (A) that the details written on the loose sheet have not been properly deciphered. He ultimately held that there is no merit in making addition only based on the statement recorded during the search and loose sheets found when the statement is retracted and details in the paper are not deciphered. These findings of learned CIT (A) could not be controverted by learned DR of the revenue by bringing any additional evidence on record in respect of identity and address of the persons named in loose paper and by deciphering the loose paper. Hence the addition made by the AO is based on the statement alone which is not sustainable as per settled position of law by now. In the written submissions filed by the learned DR of the revenue as reproduced above, this is the only submission that the addition was made by the AO on the basis of statement made by the assessee u/s 132 (4). Along with these written submissions, learned DR of the revenue has also enclosed a copy of note of 10 pages by the AO i.e. DCIT, central circle – 1, Mangaluru along with copy of statement of the assessee u/s 132 (4). This note of the AO is mainly about retraction of the statement u/s 132 (4) by the assessee. Now the question is as to whether addition can be made on the basis of statement alone (even if retraction is not accepted) without bringing on record any corroborative material on record. Learned DR of the revenue in his written submissions or the AO in the assessment order or in the Note submitted before us through the learned DR of the revenue has not indicated about this that the AO has brought on record any corroborative material and hence, we decline to interfere in the order of CIT (A) on this issue.

120. Now, we take up the remaining issue No. 4 as noted in Para 3 above and this issue is raised by the revenue in the case of Mr. MNR for A. Y. 2016 – 17 in ITA No. 2457/Bang/2019 and this is about deletion of addition made by the AO of Rs. 700 Lacs on the basis of retraction of the assessee. This amount of Rs. 700 Lacs includes three

additions being of Rs. 100 Lacs (Issue No. 4 (i)) added by the AO by alleging that there is unexplained expenditure in Global Export Ullal, Rs. 500 Lacs (Issue No. 4 (ii)) by alleging that there is unexplained investment of the assessee in M/s Sai Siddhi Developers and Rs. 100 Lacs (Issue No. 4 (iii)) by alleging that there is unexplained investment of the assessee in construction of factory premises of Kusuma Cashew. On this issue, learned DR of the revenue supported the order of AO and learned AR of the assessee supported the order of CIT (A).

121. We have considered the rival submissions and we find that Para 6.3.8 of the order of CIT (A) in this case is relevant for (Issue No. 4 (i)), Para 6.4.9 of the order of CIT (A) in this case is relevant for (Issue No. 4 (ii)) and Para 6.5.9 of the order of CIT (A) in this case is relevant for (Issue No. 4 (i)ii),and hence, we reproduce the same for ready reference as under:-

“6.3.8 I have considered the facts of the case and case laws relied on by the AR, the ratio laid down in the said cases are applicable to the appellant's case. Considering all the aspects, I hold that, the additions made is purely based on the statement made by the appellant without any corroborative evidence by the AO. The statement in oath considering acceptance, but lacks basis. In the absence of basis, the appellant could successfully retract that part of the statement. In the instant case, the appellant has denied having exchanged the on money for investment in dairy land. Even after the Appellant's case is covered under search operations under section 132, the department did not unearth any evidence regarding exchange of cash in sale transaction except statement of the appellant at the time of search operation. In the absence of proper inquiry and sufficient evidences, I find no reason to confirm addition made by the AO towards on money. Hence, I delete the additions made amounting to Rs.1,00,00,000/-, being unexplained expenditure in Global Export, Ullal.”

“6.4.9 I have considered the facts of the case and case laws relied on by the AR, the ratio laid down in the said cases are applicable to the appellant's case. Considering all the aspects, I hold that, the additions made is purely based on the statement made by the appellant without any corroborative evidence by the AO. The statements on oath contain admission; but it is not backed by any evidence. In the absence of evidence, the appellant could successfully retract that part of the statement. In the instant case, the appellant has denied having exchanged the on money for investment in Sai Siddi Develpers. Even after the Appellant's case is covered under search

operations under section 132, the department did not unearth any evidence regarding exchange of cash in sale transaction except statement of the appellant at the time of search operation. In the absence of proper inquiry and sufficient evidences, I find no reason to confirm addition made by the AO towards on money. Hence, I delete the additions made amounting to Rs.5,00,00,000/-, being investment in Sai Siddi Developers.”

“6.5.9 I have considered the facts of the case and case laws relied on by the AR, the ratio laid down in the said cases are applicable to the appellant's case. Considering all the aspects, I hold that, the additions made is purely based on the statement made by the appellant without any corroborative evidence by the AO. The statements on oath contain admission; but it is not backed by any evidence. In the absence of evidence, the appellant could successfully retract that part of the statement. In the instant case, the appellant has denied having exchanged the on money for investment in factory building of Kusuma Cashew. Even after the Appellant's case is covered under search operations under section 132, the department did not unearth any evidence regarding exchange of cash in sale transaction except statement of the appellant at the time of search operation. In the absence of proper inquiry and sufficient evidences, I find no reason to confirm addition made by the AO towards on money. Hence, I delete the additions made amounting to Rs.1,00,00,000/-, being unexplained expenditure in Global Export, Ullal.”

122. We find that in the above three paras reproduced above, a categorical finding is given by the learned CIT (A) in each of these paras that the addition made is purely based on the statement made by the assessee without any corroborative evidence by the AO. Before us also, learned DR could not produce any corroborative evidence which was available with the AO to make these additions. This is a settled position of law that any addition made only on the basis of statement of the assessee in course of search without bringing on record any adverse cogent material to corroborate such statement, the addition so made is not sustainable and therefore, we find no infirmity in the order of CIT (A) on these three issues and therefore, decline to interfere in this order of CIT (A) on these three issues. Accordingly, Issue No. 4 in the Appeals of the revenue is also decided in favour of the assessee.

123. In the result, all fifteen appeals of the assessee are allowed in the terms indicated above and all nine appeals filed by the revenue are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated: 24th August, 2020.

/NS/*AKG

Sd/-

(A.K. GARODIA)

Accountant Member

Copy to:

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.