

**अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE  
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER  
AND  
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A No.201 & ITA No.1043/Ind/2016  
Assessment Year:2012-13 & 2013-14**

DCIT(Central)-1 Indore	<b>बनाम/ Vs.</b>	M/s. N.R. Finance Pvt. Ltd. New Siyaganj, HTL Unit-2, Mall Godown Road, Indore (Respondent)
(Revenue)		
P.A. No.AAACN6750F		

**CO Nos.39 & 40/Ind/2018  
(Arising out of ITA No.201 & 1043/Ind/2016)  
Assessment Year:2012-13 & 2013-14**

M/s. N.R. Finance Pvt. Ltd. New Siyaganj, HTL Unit-2, Mall Godown Road, Indore (Appellant)	<b>बनाम/ Vs.</b>	DCIT(Central)-1 Indore (Revenue )
P.A. No.AAACN6750F		

Appellant by	S/Shri Mahesh Agrawal & Kunal Agrawal,ARs
Revenue by	Shri Lal Chand, CIT- DR

**ITA Nos.204,206 & 207/Ind/2018  
Assessment Year:2009-10, 2011-12 & 2012-13  
&  
ITANo.423/Ind/2017  
Assessment Year:2013-14**

DCIT-3(1) Indore	<b>बनाम/ Vs.</b>	M/s. N.R. Company 6, RTO Road, Shriram Nagar, Indore (Respondent)
(Revenue)		
P.A. No.AAGFN6169F		

Revenue by	Shri Lal Chand, CIT- AR
Respondent by	Shri S.S. Sheetal, Adv.
Date of Hearing	12.01.2021
Date of Pronouncement	09.03.2021

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

The above captioned six appeals filed at the instance of the revenue and two Cross Objection filed by the assessee are directed against the order of ld. CIT(A)-III, Indore dated 18.07.2019 & 05.12.2017.

2. As submitted by the Ld. Counsels for the assessee(s) and also duly accepted by the Ld. Departmental Representative that most of the issues raised in these appeals are common and are arising out of the similar facts, thus for the sake of convenience and brevity all these appeals were heard together on the request of both the parties and are being disposed off by this common order.

3. In the case of M/s N.R. Finance Pvt. Ltd revenue has raised following grounds in the appeal relating to Assessment Years 2012-13 and 2013-14:-

M/s N.R. Finance Pvt. Ltd

IT(SS)No.201/Ind/2016 Assessment Year 2012-13

*“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.2,72,71,700/- made by the AO on account of estimation of sale consideration on the basis of seized documents LPS-A3 found from the premises of the broker, Shri Kamal Goyal without appreciating the facts and evidences brought into light by the AO during assessment proceedings.*

*The appellant reserves the right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.*

ITA No.1043/Ind/2016 Assessment Year 2013-14

*“On the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs.13,31,01,675/- made by the AO on account of estimation of sale consideration on the basis of seized documents LPS-A3 found from the premises of the broker, Shri Kamal Goyal without appreciating the facts and evidences brought into light by the AO during assessment proceedings.*

*The appellant reserves the right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.”*

4. On 10.10.2018 when the instant appeals came up for hearing Ld. Departmental Representative requested to provide an opportunity to file additional grounds and the same was accepted by us. Following additional grounds were filed commonly for Assessment Year 2012-13 and 2013-14 pertaining to the assessee namely M/s N.R. Finance Pvt. Ltd :-

1. Whether on the facts & circumstances of the case the Ld. CIT(A) has erred in holding that the case of the assessee is at variance with the actual registered sale price paid for the said plots as per documents submitted by the assessee in the appeal proceedings without providing the AO any opportunity to rebut the claim of the assessee under Rule 46A.

2. Whether in the facts and circumstances of the case & in law, the Ld. CIT(A) erred in allowing relief to the assessee without calling for Remand report from the A. O. despite the fact that additional evidences were submitted by the assessee and 'without providing any opportunity to the A.O. under Rule 46A.

5. Against the appeal filed by the Revenue assessee namely M/s N.R. Finance Pvt. Ltd has also filed Cross Objection raising following grounds of appeal:-

C.O. No.39 & 40/Ind/2018 A.Y. 2012-13 & A.Y 2013-14

1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)- 3 ("the CIT(A)") erred in upholding the action of the Deputy Commissioner of Income-tax-Central, Indore ("the AO") in initiating the proceedings u/s 153A of the Income-tax Act, 1961 ("the Act"). The Cross objector, prays that the proceedings under section 153A of the Act be annulled as being ab-initio and/or otherwise void and bad-In-law.

2. On the facts and circumstances of the case and in law the learned CIT(A) erred in not quashing the assessment order passed by AO based on third party information gathered at the back of Appellant without providing opportunity of cross examination inspite of specific request. Accordingly the cross objector prays that the order passed in

*violation of principles of natural justice be declared void, illegal and directed to be annulled.*

*3. On the facts and circumstances of the case and in law the additional ground of department appeal is erring in doubting the authenticity of the registered sale deed documents executed before the sub-registrar office which are documents in public domain and cannot be considered as additional evidences. Accordingly the cross objector prays that the additional grounds of department be directed to be dismissed.*

6. In the case of another assessee namely M/s N.R. Company Revenue has raised following grounds of appeal for Assessment Years 2009-10, 2011-12, 2012-13 and 2013-14:-

ITANo.204/Ind/2018 Assessment Year 2009-10

- 1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.1,89,47,147/- without considering the seized documents page no.64,66 and 68 of LPS-A3 from the premise of the broker who sold the plots in the area developed by assessee and the fact that there is huge difference in guideline value and sale consideration shown by the assessee which supports that the sale price was suppressed in books.*
- 2. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in holding that no opportunity was provided to assessee for cross examination even when in statement of the partner, recorded u/s 131 of the Act, the details of seized documents were provided to him as such sufficient opportunity was provided to assessee firm and the assessee firm never asked for cross examinations during the course of assessment proceedings.*
- 3. The appellants craves leave to add to, deduct from, or otherwise amend the above ground of appeal.*

ITA No.206/Ind/2018 Assessment Year 2011-12

1. *Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.3,41,02,145/- without considering the seized documents page no.64,66 and 68 of LPS-A3 from the premise of the broker who sold the plots in the area developed by assessee and the fact that there is huge difference in guideline value and sale consideration shown by the assessee which supports that the sale price was suppressed in books.*
2. *Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in holding that no opportunity was provided to assessee for cross examination even when in statement of the partner, recorded u/s 131 of the Act, the details of seized documents were provided to him as such sufficient opportunity was provided to assessee firm and the assessee firm never asked for cross examinations during the course of assessment proceedings.*
3. *The appellant craves leave to add to, deduct from, or otherwise amend the above ground of appeal.*

ITA No.207/Ind/2018 Assessment Year 2012-13

1. *Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.21,11,75,397/- without considering the seized documents page no.64,66 and 68 of LPS-A3 from the premise of the broker who sold the plots in the area developed by assessee and the fact that there is huge difference in guideline value and sale consideration shown by the assessee which supports that the sale price was suppressed in books.*
2. *Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in holding that no opportunity was provided to assessee for cross examination even when in statement of the partner, recorded u/s 131 of the Act, the details of seized documents were provided to him as*

*such sufficient opportunity was provided to assessee firm and the assessee firm never asked for cross examinations during the course of assessment proceedings.*

*3. The appellant craves leave to add to, deduct from, or otherwise amend the above ground of appeal*

ITA No.423/Ind/2017 Assessment Year 2013-14

*1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.33,72,67,720/- made by the AO on account of undisclosed receipts from sale of plots without considering the seized documents page no.64,66 and 68 of LPS-A3 from the premise of the broker who sold the plots in the area developed by assessee and the fact that there is huge difference in guideline value and sale consideration shown by the assessee which supports that the sale price was under mentioned in books.*

*2. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in holding that no opportunity was provided to assessee for cross examination even when in statement of the partner, recorded u/s 131 of the Act, the details of seized documents were provided to him as such sufficient opportunity was provided to assessee firm and the assessee firm never asked for cross examinations during the course of assessment proceedings.*

*3. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in law by deleting the addition of Rs.15,67,401/- made under the head excess development charged claimed without considering that the assessee remained fail to explain the reason of excess payment.*

*4. The appellant craves leave to add to, deduct from, or otherwise amend the above ground of appeal*

7. From perusal of the grounds raised by the Revenue for both the assessee(s), we find that only following three issues needs to be adjudicated:-

(i) Whether the Ld. CIT(A) erred in deleting the additions which were made by Ld. A.O applying the estimated rate per sq. feet on sale of plot of lands based upon the seized documents bearing page 64,66 and 68 of LPS A3 seized from the premises of broker Mr. Kamal Goyal as against the rate per sq. feet of land sold by the respective assessee(s) declared in their books of accounts.

The following chart shows the impugned suppressed income computed by the Ld. A.O.

**N.R. FINANCE PVT. LTD**

Assessment Year	Area in Sq.ft	Rate per Sq.ft disclosed in books	Rate per Sq.ft applied by A.O	Alleged suppressed income
2012-13	35082	322.63	1100	27271700
2013-14	136927	327.93	1300	133102629

**N.R. COMPANY**

Assessment Year	Area in Sq.ft	Rate per Sq.ft disclosed in books	Rate per Sq.ft applied by A.O	Alleged suppressed income
2009-10	114768	334.91	500	18947047
2011-12	58125	313.29	900	34102519
2012-13	270835	320.28	1100	211175466
2013-14	346146	325.65	1300	337267725

(ii) That Ld. CIT(A) erred in not following the provisions of Rule 46A of I.T. Rules in the case of M/s. N.R. Finance Pvt. Ltd for Assessment Year 2012-13 and Assessment Year 2013-14 by accepting the documentary evidence namely registered sale deed without providing an opportunity to the Ld. A.O and not calling Remand Report.

(iii) That Ld. CIT(A) erred in deleting disallowance of development charges at Rs.15,67,401/- made by Ld. A.O for Assessment Year 2013-14 in the case of assessee namely M/s N.R. Company (In short 'NRC').

8. As regards the Cross Objection raised by M/s N.R. Finance Pvt. Ltd (In short 'NRFPL') for Assessment Year 2012-13 and 2013-14 the sole grievance is that opportunity of cross examination was

not provided and the additions were made merely on the basis of third party information gathered at the back of appellant.

9. We observe that the appeals before the first appellate authority were first decided in the case of M/s N.R. Finance Pvt. Ltd and subsequently in the case of M/s N.R. Company (In short 'NRC'). In the order of 'NRC', Ld. CIT(A) referred to the finding of Ld. CIT(A) given in the case of M/s N.R. Finance Pvt. Ltd. Therefore, as agreed by both the parties, we are taking the case of M/s N.R. Finance Pvt. Ltd as the lead case and the common issue arising in case of both the assessee(s) shall be decided on the basis of facts of M/s N.R. Finance Pvt. Ltd.

10. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in the business of construction of residential and commercial complexes and development of residential colony and plots. The appellant is one of the companies of M/s Appolo Group of Indore which was searched u/s 132 of the Act on 29.01.2012. The assessee company entered into an agreement for development of land owned by M/s N.R. Company and others at Gram Bicholi Hapsi in the name and style of N.R. Estate vide agreement dated 04.04.2007. Subsequently vide

another agreement dated 05.02.2008 terms and conditions of the development agreement were changed and in consideration of relinquishing the part of development charges assessee agreed to acquire plots of land spread over financial year 2008-09 to 2012-13. Search action were also carried out u/s 132 of the Act on 29.01.2012 at the premises of Mr. Kamal Goyal, Indore who is a broker and deals in real estate transactions for various builders and developers. Along with the loose papers, diary LPS A3 was also seized and on page 64, 66 and 68 of this diary there are some details of plots sold in 'N.R. Estates' and the rate of sale per sq. feet was ranging from Rs.1115 to Rs.1131/- per sq. feet. Ld. A.O based on the information appearing in the seized document was of the view that assessee has suppressed the sales by showing the sales at lower rate whereas fair market value of the land sold is much higher and the transactions must have been carried out at the higher rate.

11. Ld. Counsel for the assessee submitted before Ld. A.O that the assessee has no relation with Mr. Kamal Goyal and there is no financial transaction ever entered with the broker Mr. Kamal Goyal. Details shown in the seized diary do not correlate to the actual sale

transaction since the parties shown in the loose diary never entered into such transaction and the sale deed were registered in other names. There is no incriminating material found during the course of search to show that any amount over and above the sale consideration shown in the registered sale deed has ever been received from the purchasers.

12. However Ld. A.O was not convinced and he made the additions for various assessment years applying the estimated rate per sq. feet of land at Rs.500, Rs.700/-, Rs.900/- Rs.1100/- and Rs.1300/- for Assessment Year 2009-10 to 2013-14. Against the alleged addition of suppressed income assessee preferred appeal before Ld. CIT(A) and succeeded.

13. Now the Revenue is in appeal before the Tribunal for Assessment Year 2012-13 and 2013-14.

14. Ld. Departmental Representative supporting the order of Ld. A.O submitted that the fair market value of the land sold by the assessee is much higher than the consideration shown in the books of accounts. Seized documents from the premises of Mr. Kamal Goyal clearly spells out the fact of actual sale price and therefore the order of Ld. A.O should be confirmed.

15. Per contra Ld. Counsel for the assessee namely M/s N.R. Finance Pvt. Ltd took us through the paper book filed on 10.09.2018 running from page 1 to 153 as well as the written submissions filed before us which reads as follows:-

At the outset, it is submitted that despite an extensive search proceeding being undertaken by the department, no incriminating material was found at appellant's place. The Ld. AO solely relied on the noting in the diary seized from the premises of broker namely Shri Kamal Goyal. Further, the additions made by the Ld. AO are based on estimate, guess work, presumptions which is bad on facts and in law.

During the course of assessment proceedings, it was submitted to the ld. AO that the appellant does not have an business relation with the broker Shri Kamal Go al and no lots were sold through him. The Ld. AO did not dispute such fact but alleged that the brokerage might have been paid in cash to the said broker. Such allegation is totally based on presumption and highlights the fact that any material seized from Shri Kamal Goyal premises cannot be taken into consideration for appellant's case. Moreover, the Ld. AO himself disbelieved his presumption where no addition was made in the form of imaginary brokerage he assumed to have been paid in cash.

The main premise of the allegation of the Ld. AO was that the rates of the plot numbers mentio.ned in the diary range from Rs. 1150/- to Rs. 1131/- per Sq. ft. but on the contrary the appellant has sold within range Rs. 325/- to Rs. 350/- per Sq. ft. Such allegations did not hold good as it was submitted that lot numbers mentioned in the seized diar did not belonged to the appellant. The appellant submitted the

development agreement to establish the fact that its share of plots is distinct from the plot numbers mentioned in the diary seized. Further, without prejudice to the above-mentioned contention, it was also submitted that the sale consideration is pre-decided and negotiated at the time of booking of plot. The next increase or decrease in the market price of the property has no effect to the actual sale consideration decided with buyer in launching the project. This fact was verifiable from the books that most of the bookings of lots were made in the commencement phase of the project only. Thus, the application of estimated sale rates is highly erroneous and bad on facts and in law.

Also, during the course of search, nothing incriminating was found related to suppression of sale. No other evidence whether documentary or circumstantial, pertaining to receipt of on-money for any plot sold by the appellant were found in course of search. It is also pertinent to mention nothing incriminating in the form of cash valuables or unaccounted assets were found there was no corroborative evidence in the hands of ld. AO to justify such alleged additions.

That the books of the account of the company are duly audited under the provision of the Companies Act and u/s. 44AB of the Income Tax Act, 1961. Neither the auditor nor the department have raised any doubt / discrepancy in the book results. The Ld. AO took a contradictor stand where on the one hand he accepted the books results and on the other alleged addition in the nature of estimated sale price was made.

During the assessment proceedings, the appellant had made a specific request that if any reliance is laced on the seized diary, then an opportunity to examine Shri Kamal Goyal may kindly be provided but such request was not considered by the Ld. AO. Thus, the alleged addition made by the Ld. AO was in total ignorance to the principles of natural justice.

The department had recorded statements of broker Shri Kamal Goyal during the search proceedings u/s 132(4) where on oath he had stated that noting in the diary are trade inquiries. During the course of appellant had demonstrated the fact that noting mentioned seized diary in the form of buyers sale rates & date of sale etc. are not matching with the actual registered documents. Thus such demonstration clearly corroborates the fact that the noting in the seized diary were not related to the appellant and were merely trade inquiries which had not crystalized into an material transaction. Also this fact adequately proves that the seized diary being relied for the alleged addition is nothing but a "dumb document" as department failed to link the same with another corroborative evidence and therefore it has no evidentiary value in the eyes of law.

The following is the summary of judicial pronouncements in support to our contentions and may kindly be considered by your honours:-

S.No.	Citation	Proposition
1	CIT vs Kabul Chawla 380 ITR 573 (Del)	Since no incriminating material was unearthed during the search, no additions could have been made to the income of assesseees.
2	Shri Kamal Kishore Kotwani Vs. CIT I.T.(SS) ANo. 186/Ind/2016 dtd 04.07.18 (Hon'ble Bench of ITAT Indore)	
3	CITVs S.M. Agrawal 293 ITR 043(Del)	No addition on the basis of document can be made until contents of it are proved against the person and the same is nothing but dumb document
4	CIT vs. Ved Prakash Choudhary 305 ITR 245 (Del)	
5	Cit vs. Kantilal Prabhudas Patel 296 ITR 568 MP	
6	ACIT vs Narottam Mishra (2018) 32 ITJ 510 (Indore)	
7	CIT vs. Anil Bhalla 322 ITR 191(Del)	No addition on the basis of document recovered from third party without any corroborative evidences.
8	Cit vs Vatika Landbase P Ltd 383 ITR 320 (Del)	

9	DCIT vs Shri Mahesh Bansal 499 IND 2018	
10	CIT(I) vs Shri Pukhraj Soni 585 IND 2015	When registered sale deeds are available then loose paper found at the premises of other person not connected with assessee can not be relied to contradict, vary, adding to or subtracting from its terms (i.e. Registered sale deed)
11	CIT vs. Sunita Dhadda (Supreme Court) dt 28.03.18	

1.

Now, the department had raised additional grounds of appeal which have mainly contended the admissibility of the registered sale deeds as an evidence without it being referred to Ld. AD u/r 46A. In this context it is submitted that a distinction needs to be made between additional evidence u r 46A and clarificatory evidence. The sale registries are public document and the documents in public domain cannot be termed as additional evidence. Such documents are in the nature of clarificatory evidence and that the Ld. CIT(A) having co-terminus powers is entitled to take judicial notice of events relevant to the issue for adjudication.

We further submit that in the instant case no inquiry/investigation was undertaken by the Ld. AO to unearth the true factual position and mere reliance was placed on the particulars mentioned in the seized diary. The same observations are also evident from order of Ld. CIT(A). The Ld. AO was duty bound to collect complete material and take the case to its logical end. Without prejudice to the above, due to such reason also, the registered sale deeds cannot be considered as additional evidence but a clarificatory evidence as it being an extension of same trail initiated by the Ld. A.O. The sale registers being a legally executed document has clarified that the particulars mentioned in the seized documents vary with the actual transaction. Hence we humbly submit that the ld. CIT(A) was not required to confront the same material to AO and there is no

violation of Rule 46A.

We place reliance in the case of Dy. CIT v Rungta Mines Ltd (IT (SS) Appeal Nos. 30 to 33 (Kol) of 2015 dated 9-3-2018 which has held as under on the issue of public documents not being additional evidence

25. In the revised grounds of appeal, the department has challenged the aforesaid action of the Ld. CIT(A) as violation of Rule 46A, wherein the Ld. CIT(A) has not confronted these materials with AO and elicited a Remand Report before taking into consideration these new materials. which the AO was not privy to during assessment proceedings. We note that as per the scheme of the Act, the Ld. CIT(A) enjoys plenary & co-terminus powers as that of AO while deciding the appeal before him. The appellate proceeding before the Ld. CIT(A) is akin to continuation of assessment proceedings. The Ld. CIT(A) after giving notice to assessee has power to even enhance the assessment made by AO. As per rule 46A of Income-tax Rules, the Ld. CIT(A) has to give opportunity to AO before admitting Additional Evidences. We note that the Ld. CIT(A) has based his decision on the materials produced before the AO. However, in addition to it has gone through the financial result of similar companies located at Orissa and which are engaged in the same activity as that of the assessee company. The annual reports of three companies i) M/s. Tata Sponge Iron Ltd., (ii) M/s. Orissa Sponge Iron & Steel Ltd. and (iii) M/s. MSP Steel & power Ltd. have been looked into by the Ld. CIT(A) and compared the consumption of iron ore with that of assessee company which is as under:

Financial Year	Tata Spouge Iron Ltd.	Orissa Sponge Iron & Steel Ltd.	MS? Steel & power Ltd.	Rungta Mines Ltd. (Assessee)
2006-07	1.59	1.51	2.09	1.65
2007-08	1.68	1.55	2.04	1.69
2008-09	1.63	1.61	2.45	1.67
2009-10	1.59	1.79	1.93	1.65

26. The aforesaid chart was drawn by the Ld. CIT(A) after perusal of the annual report of the aforesaid companies which are in public domain and cannot be termed as additional evidence. The Ld. CIT(A) who is discharging the appellate jurisdiction over the decision of a quasi judicial authority i.e. AO and who enjoys plenary & co-terminus powers are entitled to take judicial notice of events relevant to issue for adjudication and in this case has taken note of the annual report of these three companies to form an opinion on the issue in question cannot be faulted. After comparing the results of consumption of iron ore by similar companies engaged in same business in State of Orissa, the Ld. CIT(A) came to the conclusion that it is not possible that Fe content of iron ore can be universally held as more than 65. which is evident from a glance over the results given in the chart supra. Further the Ld. CIT(A) referred to information bulletin issued by Andhra Pradesh pollution Control Board which suggested yield ratio of 1.60 to 1.75. These we note are public documents which are readily available in public domain, which cannot be termed as additional evidence. We note that it is not the case of the department that these reports which are taken note by the

Id CIT(A) are false and concocted, and thereby the Id CIT(A) was misled to pass the impugned order. Moreover we note, even if these documents are excluded, then also the impugned order of Id CIT(A) survives. Therefore, there is no merit in the contention of the department raised in this revised ground.

16. Since similar issue relating to two different assessee(s) arising out of the common facts are under consideration, opportunity was also given to the Ld. Counsel for the assessee appearing on behalf of M/s N.R. Company who took us through the paper book running from page 1 to 89 and reliance was placed on the following written submissions specifically with regard to the alleged undisclosed sales receipts of sale of plots of 'N.R. Estates'.

i) The assessee submits that the above addition was made by Learned AO solely relying upon certain information provided to her by DCIT (Central) , Indore. According to the said information , during the course of the proceedings of search at one Apollo Group of Indore and certain other persons including the residential premises of a broker named Kamal Goyal, certain documents were found and according to the said document and in particular a diary seized from residential premises of the broker Kamal Goyal, it was revealed that the rates of Plots in the colony 'NR Estate' were in the range of Rs 1150 to Rs 1311 per Sq Ft. As according to the information these were the rates quoted to the customers by said broker Kamal Goyal , the DCIT, taking cognizance of the information available from the diary seized from broker Kamal Goyal worked out year wise estimated average rates and forwarded the information to the AO . Based on the said information and the estimation of average rates as worked out by DCIT (Central), Indore, AO assumed that the rates at which the assessee has sold plots

to various buyers are not actual rates and the sale of plots might have been effected at higher rates. The AO, therefore, proposed to treat the difference between the estimated rates as computed by DCIT (Central), Indore on the basis of the information gathered by him from the broker's diary and the actual rates as per the books of accounts of the assessee as unaccounted income of the assessee. The Learned AO accordingly required the assessee to show cause as to why the addition as proposed be not made treating the difference between the estimated rate and actual rate as unaccounted income. It is important to bring it to the notice of this Hon'ble authority that the entire assumption of the AO regarding sales of higher rate was based solely upon the advice of higher authority viz., DCIT-(Central),Indore , who had worked out the estimated prevailing rates on the basis of his own imagination without any concrete / cogent evidence / material to show that assessee has in fact effected any such sales at higher rates than those reflected in the books of accounts. The entire addition was thus based upon the advice / dictate of the higher authority without any independent application of the mind of AO and without any attempt to verify as to whether the assessee has in fact effected any sales at higher rates. The AO being a quasi-judicial authority is required to make his assessment independently by application of his own mind and assessment merely on the dictate or advice of another authority is vitiated in law and deserves to be set aside on that ground alone. Reliance in this respect is placed upon following decisions:-

- a) In case of Dinshaw Daravshaw Shroff Vs CIT reported in 11 ITR 172
- b) In case of Union of India & others Vs. Sheo Shanker Sitaram & another reported in 95 ITR 523
- c) In case of J.K. Synthetics Ltd & other Vs. CBDT & others reported in 83 ITR 335

- d) In case of The Hyderabad Allwyn Metal Works Ltd. Vs. DCCT reported in 29 STC 153
  - e) In case of Elphinstone Picture Palace Vs Union of India & another reported in 74 ITR 115
  - f) In case of Ambica Oil & General Mills Vs. TT officer cum Assessing officer reported in 158 Taxman 167(Del)
  - g) In case of Genesys International Corporation Ltd. Vs. ACIT reported in (2012) 28 Taxman.com 134
- ii) The assessee submits that in response to the above proposal of AO for making addition on the assumption of sales at higher rate, the assessee submitted detailed replies from time to time and emphatically denied the allegation regarding unaccounted income or sales at higher rate than those reflected in relevant documents and the books of accounts.

The summary of the replies submitted by assessee is as under:-

- a) **Reply dated 27/11/2015** ---In response to the summons dated 23/11/2015 issued by AO requiring the assessee to show cause against proposed addition of the difference between the rates as per broker's diary and the actual rates as per the books of the assessee, it was submitted that the assessee has no business connection with said broker Kamal Goyal and the material / information contained in his diary could not be used against the assessee for any making allegation of sales at higher rates . In support of its contention that assessee has no connection with said broker Kamal Goyal , assessee submitted details of brokers who had worked for assessee along with details of the brokerage paid to them . The assessee also submitted a detailed list of the plots sold by it during the year under consideration along with

respective Plot Nos. , their respective areas, dates of sales, sale price etc. Refuting the proposal of AO to make addition on the basis of guideline value for stamp duty purposes, the assessee submitted that no such addition could be made as the provisions of section 50C were not applicable to the present case.

- b) **Reply dated 03-10-2015** ---- The assessee reiterated the fact that it has no connection with Kamal Goyal and he had never acted as broker for assessee .The assessee further explained that since the assessee was the original seller of the plots, the price at which the plots were sold to the buyer being a launching price , was bound to be lower and merely because subsequently the rates in the colony have improved and the plots are being dealt with at higher rate did not mean that assessee has sold the plots at higher rates that too without any specific evidence that there is any understatement of consideration in any of the sales effected by the assessee . The assessee had also contended that the information contained in the broker's diary did not relate to the assessee's transactions. In fact the diary was in nature of a **dumb document** without containing any particulars or any concrete material to connect the assessee with the same. The diary did not disclose the name of buyer , seller etc . No assumption could be made that noting in the diary relate to assessee 's transactions. The assessee relied upon the provisions of section 49 of Indian Registration Act and submitted that since the transactions of sale of plots relate to immovable property compulsorily registerable under the Indian Registration Act , no other document except the registered sale deed could be accepted as evidence in respect

of such transaction. Assessee also contended that in absence of any corroborative evidence, no addition on the basis of the information from broker's diary could be made in the hands of assessee . The assessee also submitted that the burden to prove the allegation was solely upon the department and no addition could be made without bringing on record any cogent and concrete evidence.

- c) **Submission dated 23/12/2015** --- The assessee reiterated that it had no connection with broker Kamal Goyal by submitting the details/ names of broker who had dealt with assessee , along with Plot Nos. in respect of which brokerage was paid to them . Copies of A/Cs of the brokers who had acted as brokers for assessee were also filed. Not only this, the assessee also submitted copies of accounts of all buyers / parties to whom the sales were effected by assessee in the year under consideration. The assessee also submitted a detailed chart with names of the parties to whom plots were sold along with details of Plot Nos. , areas , rates at which the plots were sold and brought to the notice that none of the transactions matched with the information collected from broker's diary . By bringing on record the mismatch between the names , the dates of transactions , plot areas etc. as collected from broker's dairy and the actual transactions effected by assessee , the assessee successfully demolished the allegations of the AO and also brought on record the facts that the information available in the broker's diary could not be said to be reliable evidence for making any addition in the hands of assessee and no addition could be made solely on the basis of information contained in the broker's diary .

- iii) The assessee submits that ignoring the submissions made by assessee and ignoring the factual position that none of the transactions alleged in the broker's diary could be correlated with the assessee's actual transactions, learned AO has arrived at the conclusion that the assessee might have sold the plots at higher rates and has made an addition in the hands of the assessee on the basis of estimated rate of sale of Rs 1300/- per Sq. Ft. . It is important to note that no attempt has been made by AO to bring any positive, cogent or concrete evidence to prove that the assessee has in fact effected sales of the plots in question at the rates higher than the rates recorded in the registered sale deeds . It is further important to note that the Learned AO also miserably failed to prove the nexus between the information contained in broker's diary and the assessee despite specific information provided by assessee regarding mismatch in brokers diary and assessee's transactions. As a matter of fact the AO did not make any attempt to verify as to whether in fact the said information relates to assessee's transactions but she proceeded on assumption that the assessee has sold the plots at higher rates obviously because of advice of the higher authority. Under the circumstances the notings in the diary of Kamal Goyal can hardly constitute evidence against assessee, much less reliable, cogent, positive or acceptable and the addition based on the same is unsustainable in law .
- iv) In response to the summons issued by the AO, the reply submitted by the broker Kamal Goyal is absolutely vague and does not establish any nexus with the information

contained in his diary and the appellant . The said reply can by no stretch of imagination be treated as an evidence much less cogent or positive evidence to level an allegation against the assessee regarding sale of plots at the rates mentioned in his diary . The said person Kamal Goyal has not uttered a single word which can lead to the inference that he has at any time acted as broker for the assessee nor the said letter can constitute an evidence to say that the assessee has effected sale of plots through him or through the chain of brokers as alleged by him . Moreover the Plot Nos. referred to in his diary as well as reply do not match with the Plot Nos. sold by the assessee. As already stated above the information contained in his dairy regarding the Plot Nos. as well as the parties does not tally with the actual sales effected by the assessee. Under the circumstances, the addition made by AO placing heavy reliance upon the broker's diary is in fact an addition without any basis to support the same and thus was rightly deleted . In fact there is no evidence at all either available in the broker's diary or brought on record by AO which can justify the conclusion regarding unaccounted sales drawn by AO .

- v) The assessee further submitted that no attempt has been made by AO to corroborate the information from the broker's diary with that of assessee's transaction of sale of Plot before making allegation of receipt of unaccounted money in sale of Plots. As a matter of fact the assessee had himself provided all details of the transaction of sale of plots effected by assessee during period under consideration which contained details of Plot Nos. , date of

sales, names of parties in whose favor the documents were registered and the sale consideration received by assessee but the AO even did not summon the respective buyers to verify the facts . The assessee , therefore, submitted that in absence of any nexus between the information contained in broker's diary and the assessee's transaction, no addition on the basis of such vague, uncertain and uncorroborated information could be made in the hands of the assessee. The assessee submitted that in case of a transaction of sale / purchase of immovable property which is required to be compulsorily registered, the parties to transaction are , seller, buyer and two independent witnesses. Surprisingly , the AO rested his conclusion only on notings of broker's diary without even making attempt to verify the facts from the parties to transactions viz., the buyer or the witnesses . In view of this, unless there is clinching evidence to show that any money / consideration over and above the consideration stated in the documents has passed and has actually been received by appellant no addition could be made merely on the basis of imagination, presumption, surmises and conjectures and the burden to prove that any excessive consideration has passed in the transaction was entirely upon the department. Reliance in this respect is placed on following judgments

a) Judgment of Madras High Court in the case of **N. Ramanna Reddy Vs. JCTO reported in (1971) 28 STC 683** where it is held :--

*that if the taxing authority intends to bring to tax the turnover of dealer, which, according to him , has escaped assessment by reason of deliberate attempt on the part of*

*dealer to avoid net of taxation , then it is fundamental that the dealer so called upon should be given a just and fair trial and indeed a fair opportunity to explain himself with all material on which he could support his case . The essential element in sales are seller, buyer, the goods (here the Plots) and the consideration for sale or purchase of goods and unless a nexus is established between two such persons and convincing proof is available to show that consideration did pass as a result of such sale , it would be difficult to assume that a sale of goods from one person to other has resulted. Where there is no clinching evidence to establish jural relationship of vendor and purchaser, the onus on the department become heavier, for, it should scrutinize the material with lynx eye and afford to the assessee at every material point of time an opportunity to countermand the same or let in evidence to outweigh the weight of such material .*

If the principles laid down in the above case are applied to the facts of the present case, in absence of any attempt on the part of AO to establish nexus of the material with the assessee and in absence of any clinching evidence against the assessee having been brought out by department , department's burden is not discharged and the addition must fall to the ground .

The same principles are reiterated in following judgments .

- b) **CIT Vs. Vedprakash Choudhary reported in (2008) 305 ITR 245 (Del)**, in this case also the addition based on the allegation of transfer of money was held to be without any corroborative evidence and accordingly deleted .
- c) **CIT Vs. SM Agrawal reported in (2007) 293 ITR 43 (Del)**, addition deleted for want of relevant or admissible evidence as also for want of opportunity of cross examination .
- d) **CIT Vs. DK Gupta reported in (2009) 308 ITR 230** in absence of corroborative or direct evidence , the addition

based on presumption that notings or jottings had materialized into transactions giving rise to undisclosed income deleted .

- vi) The assessee also submitted that the legal position that suspicion cannot take the place of proof and that no assessment can be made on the basis of surmises and conjectures is also settled by number of decisions some of which are as under
- a) Umacharan Shaw & Brother v/s CIT (1959) 37 ITR 271
  - b) CIT V/s Ravikumar (2007) 294 ITR 78 (P&H) .
  - c) CIT V/s Anupam Kapoor (2008) 299 ITR 179 .
- vii) The assessee further submitted that as stated herein above , the allegation of the AO is that the sales of plots effected by the assessee are at higher rates than the rates which are reflected in books of accounts . In this respect the appellant desires to submit before this Hon'ble authority that the plots have been sold by assessee under the registered sale deeds executed between the parties and since the transaction in question is compulsorily registerable as per provisions of section 17 of the Indian Registration Act , hence , in view of the provisions of section 91 & 92 of the Indian Evidence Act no other evidence except the document itself is admissible as evidence regarding the terms of the transaction embodied in such documents . A reference to the said provisions of the Indian Evidence Act would show that according to section 91 thereof when the terms of the contract , or of a grant or of any other disposition of property , have been reduced to the form of a document and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in

proof of the terms of such contract , grant or other disposition of property or of such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of law . Similarly as per section 72 of the Evidence Act where the terms of such contract, grant or other disposition of property or any matter required to be reduced to the form of a document, have been proved according to section 91 , no evidence of any oral agreement or statement shall be admitted , as between the parties to any such instrument or their representative in interest for the purpose of contradicting , varying , adding or subtracting from its terms. In view of the aforesaid principles of the Evidence Act, as against the registered sale deeds executed by appellant in favor of the buyers stating therein the consideration for which the property has been transferred to the buyers , the diary notings of a stranger viz broker Kamal Goyal are not admissible as evidence . As a matter of fact the only admissible evidence is the registered sale deed itself. The notings of the diary have thus no evidentiary value in the eyes of law and no addition on that basis can be made . Reliance in this respect is made upon the decision of ITAT, Indore Bench in the case of Shri Parshwanath Construction v/s ITO reported in (2014) 24 ITJ 409 , where the Hon'ble ITAT has applied the aforesaid principles of the Evidence Act and held that when the sale is evidenced by registered sale deed duly signed and verified i.e when the document is in writing and registered , the oral evidence loses its credibility . In the instant case there is not even an oral evidence ( because broker's reply relied upon by AO

cannot be equated with statement). A reference in this respect may also be on following decisions .

- a) Decision of Delhi High Court in case of CIT v/s Rajeev Mehta reported in (2008) 171 Taxmann 198 at 200
  - b) Paramjeet singh v/s ITO (2010) 195 Taxmann 273 (P&H) . = 323 ITR 588 .
  - c) CIT V/s Mahesh Kumar (2011) 196 Taxmann 415 (Del) . In the said judgment their Lordships' have also held that the primary burden of proof regarding understatement or concealment is upon the revenue.
  - d) In case of Smt. Sunita Dhadha Vs. DCIT reported in 148 TTJ 719 (ITAT) .
  - e) In case of Smt. K. Narasamma Vs. ITO reported in 32 ITD 494 (Hyd-ITAT) .
- viii) The assessee further submits that apart from the above legal issues regarding admissibility of the evidence, another important issue is regarding burden of proof. In the instant case since the allegation regarding understatement of consideration has been made by department, the burden of proof is upon the department i.e revenue and unless the AO brings on record some definite positive or cogent evidence to prove that the assessee has actually received the amount in excess of what is stated in the registered document no addition is to be made in the hands of assessee . In the instant case the revenue has miserably failed to discharge the said burden , as such , the addition being without any evidence is liable to be set

aside . Reliance in this respect is placed on following decisions

- a) CIT v/s Smt Sushila Devi (2002) 256 ITR 179 .
  - b) CIT V/s Smt KC Agnes (2003) 128 Taxmann 848.
  - c) KP Vergese v/s ITO (1981) 131 ITR 596 SC .
  - d) CIT V/s MS Sushila Mittal (2001) 250 ITR 531
- ix) The assessee further submits that if the jottings contained in the diary of broker Kamal Goyal (which are the sole basis of present addition in question) are carefully seen, it would be apparent that the diary notings are nothing but in the nature of dumb documents without containing any particulars about any particular transaction between the assessee and any other buyer. In fact the diary does not even mention the name of assessee . Under the circumstances the said diary notings cannot be the basis of any addition against the assessee . At this stage it may also be important to note that since the said diary was recovered from the premises of Kamal Goyal it was for Kamal Goyal to explain the said transactions. As such , the addition on basis of such dumb documents cannot be sustained. Reliance in this respect is placed on following decisions
- a) Gyankumar Agrawal Vs. ACIT reported in 30 Taxman.com 114 (ITAT-Hyd).
  - b) Ashwani Kumar Vs. ITO reported in 39 ITD 183 (Del) ,
  - c) CIT Vs. Girish Choudhary reported in 163 Taxman 608(Del) .
  - d) CIT Vs. S. M. Aggarwal reported in 162 Taxman 3 (Del) .
  - e) CIT Vs. Vatika Landbase P. Ltd . reported in 383 ITR 320(Del) .

- f) ACIT Vs. Ashok Kumar Vig reported in [2007] 15 SOT 85 (ITAT-Ranch-URO).
- g) Smt. K.V. Lakshmi Savitri Devi Vs. ACIT reported in 30 Taxmann.com 117 (ITAT-Hyd)
- x) Without prejudice to all the above grounds , the assessee further submitted that assuming without admitting that any addition on the ground of understatement of consideration i.e suppression of sale is to be made , the entire sales consideration cannot be added but only appropriate net profit rate can be applied to such differential consideration . The said principle is well settled by several judicial pronouncements which are as under :-
  - a) In case of CIT Vs. Balchand Ajit Kumar reported in 7ITJ 324(MP) ,
  - b) In case of Man Mohan Sadani Vs. CIT reported in 11 ITJ 587 MP,
  - c) In case of . Sharda Real Estate Private Limited Vs. ACIT reported in 21 ITJ 20(ITAT , Indore ) ,
  - d) In case of CIT Vs. Sharda Real Estate Private Limited reported in 23 ITJ 233 (MP)
  - e) In case of DCIT Vs. HVAC Systems (P. ) Ltd. reported in 44 SOT 81 (URO- Bangalore) ,
  - f) In case of ITO Vs. Ankur Garg reported in 42 ITR (Tri ) 475 (Agra) .

17. We have heard rival contentions and perused the records placed before us and carefully gone through the written submissions filed by both the parties. The first common issue

relates to the addition made for the alleged undisclosed sales receipts on the sale of plots in the project 'N.R. Estate'. To keep the facts straight and concise we find that M/s N.R. Company owned a piece of land and was plotted under the scheme named as 'N.R. Estate'. M/s N.R. Company approached M/s N.R. Finance Pvt. Ltd to develop the 'N.R. Estate' against the consideration of giving some plots. Plots of lands of 'N.R. Estate' were sold both by M/s N.R. Company and M/s N.R. Finance Pvt. Ltd. Sale consideration were duly disclosed in the books of accounts. Search action was carried out u/s 132 of the Act in the case of Appolo Group of which one of the assessee namely M/s N.R. Finance Pvt. Ltd was also a part. Search was also conducted at the premises of a broker namely Mr. Kamal Goyal and from his possession various loose papers including diary was found named as LPS A3. At page 64, 66 and 68 and also Page No.29 LPS A5 and Page No.5 of LPS 16 there was information about the sale of some of the plots of lands of 'N.R. Estate' and in this seized diary rate of sale per sq. feet were ranging in between Rs.1150 to 1131. The date of sale were falling in Financial Year 2012-13.

18. Based on this information the sale transactions shown by both the assessee(s) were examined and Ld. A.O formed a view that the per sq. feet rate of plot of land is much lower than those appearing in the seized diary. Though both the assessee(s) submitted that they have no relation of any nature with Mr. Kamal Goyal and the alleged information in the diary seems to be rough since the actual transaction has taken place with other persons whose names are not appearing in the seized diary. Assessee(s) also submitted that no incriminating material was found from the premises of the assessee namely M/s N.R. Finance Pvt. Ltd which could prove that any 'on money' was received. Ld. A.O however estimated the rate of sale as per his own working and made addition in the hands of both the assessee(s) in the respective assessment years for the area of plots of land sold by them. In the instant appeal the common issue relating to the suppressed income of sales for respective assessment years under appeal were computed by the Ld. A.O in the following manner:-

**N.R. FINANCE PVT. LTD**

Assessment Year	Area in Sq.ft	Rate per Sq.ft disclosed in books	Rate per Sq.ft applied by A.O	Alleged suppressed income
2012-13	35082	322.63	1100	2,72,71,700
2013-14	136927	327.93	1300	13,31,02,629

**N.R. COMPANY**

Assessment Year	Area in Sq.ft	Rate per Sq.ft disclosed in books	Rate per Sq.ft applied by A.O	Alleged suppressed income
2009-10	114768	334.91	500	1,89,47,047
2011-12	58125	313.29	900	3,41,02,519
2012-13	270835	320.28	1100	21,11,75,466
2013-14	346146	325.65	1300	33,72,67,725

19. We further observe that in the case of M/s N.R. Finance Pvt. Ltd. CIT(A) deleted the alleged addition for suppressed sales/income observing as follows:-

*3.2 I have gone through the assessment order, the written and verbal submission made by the appellant. The Assessing Officer has relied on Page Nos. 64, 66 and 68 of LPS A-3, Page No. 29 of LPS A-5 and Page No. 5 of LPS A-16 found and seized from the premises of Shri Kamal Goyal, a broker. In Para 9.6 of the assessment order it is stated that on the perusal of various pages and the seized dairy it can be seen that it contains details of the transactions in respect of the plots of 'N.R. Estates' in which the rates were reflected at Rs. 1150/- to 1131/- per sq. ft.*

However, the assessee had recorded the sales at Rs. 325/- to Rs. 350/- per sq. ft.

3.2.1 Looking at the huge difference in the two rates, the Assessing Officer issued a show cause notice to the assessee as to why the amount estimated as per LPS-A-3, should not be considered as the sale price of the plots for arriving u at the actual sales consideration of plots. The show cause notice dated 23.01.2015, is being reproduced as under:

"1. During the course of search proceedings, various documents were found and seized from the residential premises of Shri Kamal Goyal, 502, Yash Tower, 18- 19, Durga Nagar, Janki Nagar, Indore. Here it is notable that Shri Kamal Goyal is a broker. The document A-3, seized from the said premises, is a diary of calendar year 2012, On perusal of the said diary, it is seen that the transactions pertain to the period 01 .01.2012 to 20.09.2012 (prior to date of search). From the document A-3, it is also seen that the rates of the plots are shown between Rs, 1,150/- to Rs. 1,311/\_. However, as per the books of accounts of M/ s NR Finance Pvt. Ltd., the plots in N. R. Estates have been registered between the rate of Rs, 250/- to Rs. 500/- per sq. Ft.

2. Since, Shri Kamal Goyal is a broker, the above rates quoted to the customer may be a bit higher than the actual sale price. Taking the above rates, as a bit higher, an average rate of NR Estates may be estimated in view of the facts that rates in properties appreciates every year. Accordingly, you are requested to show cause as to why the assessment year Wise, average rate sale of flats in NR Estates be estimated as under: -

Assessment Year	Average estimated rate
2009-10	500/-
2010-11	700/-
2011-12	900/-
2012-13	1100/ -

3. You are also requested as to why the difference of actual amount received as per above table and as shown in the books of accounts of the assessee company may not be treated as unaccounted income of the assessee company and addition of the same amount be made the total income of the assessee company for respective assessment year. "

3.2.2 In response to the said show cause notice, the assessee filed written submissions stating that no incriminating documents have been found at the assessee's premises and it is for this reason no additions can be made on account of unaccounted transaction in its hands.

3.2.3 The Assessing Officer held that the said diary has been found during the course of search proceedings carried on at the premises of Shri Kamal Goyal and it contains details of transactions in plot of 'N.R. Estate' for the period of 01.01.12 to 20.09.12 at a rate of Rs. 1150/- to Rs.1131/-. Therefore, it provides clear details about the rates at which the transaction have been undertaken in the plots of the colony developed and the document cannot be ignored.

3.2.4 Further, The Assessing Officer rebutted the submissions of the assessee for the following reasons:

i) The assessee has stated that it does not know any person named Shri Kamal Goyal and further no brokerage has been paid to him as per books of accounts of the assessee company. However, the fact that Shri Kamal Goyal is a broker is not in dispute. The rates at which plots were sold in the project developed by the assessee company were higher than the rates at which the transactions were recorded in the books of the assessee. Since the assessee could not record the full brokerage in respect of sale of plots in the books of account, it might have paid the brokerage in cash. As regards the brokerage in respect of the sale value reflected 'in' the books which has not been paid, it would be sufficient to state that the assessee has reflected very thin margin on sale of plots and for this reason also the brokerage might have not been reflected. The assessee has reflected purchase of plot at Rs.269.64 per sq. ft. and has reflected sales of Rs.270/- to Rs.560/- per sq. Ft. in all the five years viz A.Ys. 2009-10 to 2013-14. Most of the sales have been shown in the range of Rs. 270/- to Rs.325/- and only three sale are at Rs.560/-.

*ii) The assessee has further stated that the rates quoted in the diary may be in respect of resale transactions proposed to be carried out by the broker. If at an the rates were in respect of transaction proposed to be carried out by the broker then the same would not have been recorded in the diary. Further, if the rate at which resale transaction are being undertaken at a higher rate, then by no stretch of imagination it can be considered 'that the assessee has been selling its plots at a such an abnormal lower rate.*

*iii) The assessee in its submission has stated that no opportunity to cross examine the witness has been provided to it. In this respect it can be stated that the assessee has already been supplied the copy of LPS-A-3 found and seized from the premises of Shri Kamal Goyal which is self explanatory and therefore, the plea of the assessee for cross-examining does not hold any ground.*

**3.2.5 The Assessing Officer has determined the income as under:**

Particulars / Asstt Years	2009-10	2010-11	2011-12	2012-13	2013-14
Plot Area Sold (In Sq. Ft)	53680	41812	21202	35082	136927
Rate estimated (In Rs.)	500	700	900	1100	1300
Estimated Sale Consideration (A)	26840000	29268400	19081800	38590200	178005100
Sale Consideration in Books (B)	16544355	19576000	6800700	11318500	44903425
Cost of Plots (C)	14474278	11274196	5716913	9459513	36920726
Estimated Profit on Sale of Plot(A-C)	12365722	17994204	13364887	29130687	141084374
Profit reflected in books IB-C)	2070077	8301804	1083787	J858987	7982699
suppression of Income on sale of Plot	10295645	9692400	12281100	27271700	133101675

3.3.1 From the above statement of Shri Kamal Goyal it is seen that seized document A-5 contains common details of all the deals and seized document A-16 refers to the trade enquiries. Even the Assessing Officer has placed no reliance on entries in LPS A-5 and LPS A-16 for estimating the income of the appellant. The Assessing Officer has estimated the sale price the plots as per the page nos. 64, 66 and 68 of LPS A-3 which are reproduced in Para 3.1

3.3.2 Page No. 64 of LPS A-3 bearing the date 01.05.2012 is in respect of Plot No.. G 12A. On the left hand side of the said page it is written - N R Estate, G12A, 4800 sq. and 1211/-. On the right hand side it is written that it is sold by Nanak and purchased by Sanjeev. In the assessment order on top of the reproduction of seized document it is typed that 'Shri Nanak has sold a plot to some Sanjeev Gang. Shri Nanak Ram Kalra is a partner in N.R. Company'. The appellant has submitted with documentary proof that the plot G 12A was first time sold to Mrs. Shweta Kedia in March 2013. The sale consideration is shown at Rs. 14,49,900/- for the 4833 sq. ft. plot which works out to Rs. 300 per sq. ft.

3.3.3 Page No. 66 of LPS A-3 bearing the date 15.05.2012 is in respect of Plot No.D20. On the left hand side of the said page it is written - N R Estate, D20, 4000 sq. And 1275/-. On the right hand side it is written that it is sold by Kothari and purchased by AL. The appellant has submitted with documentary proof that the plot D20 was first time sold to Mrs. Sharda Jain in March 2013. The sale consideration is shown at Rs. 15,53,175/- for the 4779 sq. ft. plot which works out to Rs. 325 per sq. ft.

3.3.4 Page No. 68 of LPS A-3 bearing the date 27.05.2012 is in respect of plot no. S-385, Silicon and plot G 12A of N R Estate. The project Silicon is not connected with the appellant's business. Regarding the plot G-12A of N R Estate it is written 4800 sq. and 1311/-. On the right hand side the names of the buyer and seller is written which is not legible. The appellant has already submitted documentary proof regarding plot G-12A which is discussed in Para 3.3.2 above.

3.4 Thus, it is seen that the sale price of the plots of N R Estate mentioned in the seized documents, page nos. 64, 66 and 68 of LPS A-3 on which the Assessing officer has placed reliance to estimate the income of the appellant is at variance with the actual registered sale price paid for the said plots as per the documents submitted by the appellant in the appeal proceedings. At this

stage, before drawing a final conclusion, it is relevant and necessary to consider the ratios of the following decisions.

3.4.1 The Hon'ble High Court of Delhi in the case of CIT vs. Anil Bhalla (2010) 322 ITR 191 (Del.) observed that no independent material or evidence had been brought on record by the AO to establish that the notings/jottings recorded on the loose sheet or paper represented an unaccounted transaction, then the explanation of the assessee should be accepted. In this situation, the Tribunal was right in holding that the loose sheet or document does not represent any investment or expenditure over and above the books of accounts of the assessee out of income alleged to be earned from unaccounted sources .

3.4;2 The Hon'ble ITAT Hyderabad 'B' Bench in the case of DCIT vs M. Aja Babu following the decision of Hon'ble High Court of Delhi in the case of CIT. nil Bhalla (supra), CIT vs. Dmesh Jam (HUF) 211 Taxman 23 (Del) and CIT vs. Jmpal Aggarwal 212 Taxman 1 (Del), ITAT Mumbai in the case of ACIT vs. JP Morgan India Pvt. Ltd. 46 SOT 250(Mumbai), held that the addition made by the AO based on the loose paper, which is not a conclusive evidence and therefore, the same is not sufficient for making the addition. The Tribunal also held that no addition can be made on the basis of dumb document/notebook/loose slips in absence of any other material to show that the assessee has made investment in land. The relevant observations and findings of the Tribunal in this case read as under:-

17 We have heard the arguments of both the parties, perused the record and have gone through the orders of the authorities below. In this case, the addition was made by the AO based on the loose paper and the same, in our view, cannot be considered as conclusive evidence. As held by the CIT(A) in the impugned order "except relying, the notings in the loose slips, no attempt has been made to corroborate the notings with independent evidence. The parties to the transaction particularly the vendor has not examined. In every transaction there is a circle concerning two parties. It is not known whether the vendor has disclosed the consideration as noted in the diary. Therefore, merely on the basis of presumption and some corroborated notings additions cannot be made." In our opinion, the deletion of addition by the CIT(A) is justified and no interference is called for in the order of the CIT(A). The following cases support the action of the CIT(A):

1. *CIT Vs. Anil Bhalla [2010] 322 ITR 191 (Del.) - wherein held that the notings recorded on the loose sheet of paper do not represent any expenditure incurred by the assessee director and that the entries related to the company in as much as the assessee could explain from the books of the company that these projects were undertaken by it, and upheld the deletion of the impugned addition under s. 69C, findings arrived at by the Tribunal are pure findings of facts and the same do not warrant any interference.*
2. *ACIT Vs. J.P. Morgan India (P) Ltd. [2011] 46 SOT 250 (Mum)*
3. *CIT Vs. Dinesh Jairi HUF [2012] 12J 211 Taxman 23 (Delhi)*
4. *CIT Vs. Jaipal Aggarwal [2013] 13J 212 Taxman 1 (Delhi)- wherein it was held that Dumb documents seized, i.e. from which nothing could be clearly understood, cannot form a justified base for making additions to income of the assessee.*

17.1 In view of the above discussion, we are of the view that the addition made by the Assessing Officer based on the loose paper, which is not a conclusive evidence and, therefore, the same is not sufficient to make the addition. In our opinion, no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has made investments in land. Noting on the note book/ diary/ loose sheets are required to be supported/ corroborated by other evidence and should also include the statement of a person who admittedly is Q party to the noting and statement from all the persons whose names there on the note book/ loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. The vendor has not examined in this case. Therefore, we do not find any infirmity in the order of the CIT(A) in directing the Assessing Officer to delete the addition made on the basis of loose paper and the order of the CIT(A) is hereby upheld dismissing the grounds raised by the revenue on this issue.

18. As a result appeal in ITA No. 1756/Hyd/2012 is dismissed."

3.4.3 Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Atam Valves (P) Ltd (2011) 332 ITR 468 (P&H)* held that when the loose papers did not relate to certain payments during the relevant period in question, then in absence of any supporting material or evidence, these loose sheets by itself were not found to be sufficient enough for making a sustainable and justified addition.

3.4.4 ITAT Delhi 'E' Bench in the case of Atul Kumar Jain (1999) 64 11J 786 (Delhi) vs. DCIT held that when the seized papers have being not corroborated by any independent evidence it cannot be considered as a reliable document or acceptable piece of evidence as a proof of investment in the house property and therefore, these kind of documents/papers are liable to be ignored and addition made on the basis of such document is not sustainable and in accordance with law.

3.4.5 In CIT v / s Kulwant Rai (2007) 291 ITR 36 (Del) the ruling of the Supreme Court in Dhakeshwari Cotton Mills Ltd v CIT (1954) 26 ITR 775 (SC) was relied upon. The Supreme Court held that even though Income Tax Authorities including the Assessing Officer has unfettered discretion and not strictly bound by the rules and pleadings as well as materials on record and is legitimately entitled to act on the material which may not be accepted as evidence, nevertheless such discretion does not entitle them to make a pure guess and base an assessment entirely upon it without reference to any material or evidence at all. Given the above state of law the Delhi High Court stated that it has no hesitation in so concluding, since the document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of the AO.

3.4.6 ITAT, Hyderabad in ITA 329/Hyd/201<sup>2</sup> dated 04.01.2014 in the case of DCIT vs. Shri Babu Rao where in Para 26 to 29 held thus:-

"26. It is clear from the above provisions of section 153A that the income of the assessee in case of a person where search is initiated u/ s. 132, the books of account or other documents or any assets are requisitioned u/ s. 132A, the Assessing Officer after issue of a notice to furnish income of the assessee in respect of each assessment year falling within 6 assessment year immediately preceding the assessment year. relevant to the previous year in which search is conducted or requisition made, the Assessing Officer shall assess or reassess the total income in. respect oJ each assessment year falling within such 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisitioned, as the case may be, on bringing on record the material to show that there is undisclosed income of the assessee. In other words, there should be material on record to show that the income is assessed on the basis of material! evidence in hands of the Assessing Officer.

27. Being so, in our opinion, guess work is not possible in case of search assessment framed u/s. 143(3) or u/s. 153A of the Act without any proper material. The AO shall have the basis for assuming that the expenditure incurred by the assessee is out of undisclosed income. It is not permissible to assess the undisclosed income in the absence of any other evidence on arbitrary basis. The unsubstantiated loose sheets cannot be considered as a conclusive evidence to make any addition towards undisclosed income. It was held by the Supreme Court in the case of CBI vs. V. C. Shukla (1998) 3 SCC 410 that "file containing loose sheets of papers are not books" and hence entries therein are not admissible u/ s. 34 of the Evidence Act, 1872.

28. In the present case, the seized material (two note books) marked as KBR/ A/ 02. and KBR/ A/ 04 wherein certain entries are found recording various transactions pertaining to the assessee. These entries in the notebook are unsubstantiated and on that basis the AO reached to the conclusion that the figures mentioned therein are to be read by adding 3 zeros and thereby he came. to conclude that there is undisclosed income in these 6 assessment years. In our opinion, the document recovered during the course of was a dumb document and led nowhere. The CIT(A) rightly came the conclusion that it cannot be acted upon and deleted the addition.

29. Other than the loose paper, the AO has not brought on record any corroborative material or evidence to show that the inference made by him is correct. The CIT(A) after taking the totality of the circumstances into consideration came to the conclusion that the addition made by the AO is not justified and the argument put forth by the assessee is supported by documentary evidence. This was not a case where relevant evidence had been ignored by the CIT(A) and their relevant evidence has been taken into consideration. The only test that was required to be applied was whether on the facts found and the state of evidence on record, the conclusion arrived at by the CIT(A) was one which could be arrived by a reasonable person properly informed in law. Applying this test, it could not be said that the decision recorded by the CIT(A) one which could not have been arrived at by a reasonable person properly informed in law considering the state of evidence on record. Hence, in our considered opinion, the CIT(A) has reached a correct conclusion in deleting the addition made by the AO on the basis of loose sheets".

3.4.7 The Hon'ble ITAT Jabalpur in the case of ACIT vs. Satyapal (2007) 295 ITR (AT) 352 (Jab.) held as under:-

*"The crux of these decisions is that a document found during the course of search must be a speaking one and without any second interpretation, must reflect all the details about the transactions of the assessee in the relevant assessment year. Any gap in the various components as mentioned in section 4 of the Income Tax Act must be filled up by the Assessing Officer through investigations and correlations with the other material found either during the course of the search or on investigation. As a result, we hold that document No. 7 is a non-speaking document.*

3.4.8 Hon'ble Delhi High Court in the case of CIT vs. S.M. Agrawal 293 ITR 043 (Del) held that unless and until the contents of the document are proved against the person, the possession of the document or handwriting of that person on such document by itself could not prove the contents .of the document. It was further held that the document recovered during the course of search from the assessee was held to be dumb document and the addition on the basis of the same is not sustainable.

3.4.9 The Hon'ble Delhi High Court in the case of CIT vs. Vatika Landbase (P.) Ltd. (2016) 383 ITR 320 (Del) held that the addition made by the Assessing Officer on the basis of documents found and seized from the computer of an employee of the assessee company showing that the rate of sale of floor space in commercial was higher than the rate shown by the assessee was not sustainable as the rates mentioned in the seized documents did not represent any completed or materialized transaction. Moreover, the Assessing Officer did not make any enquiry from the said employee or from the buyers of flats in respect of actual price paid by them.

3.4.10 The Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash Choudhary (2008) 305 ITR 245 (Del) has held that in the absence of corroborative material, the addition made on the basis of sketchy document which was unproved cannot be sustained in law.

3.4.11. The Hon 'ble Delhi High Court in the case of CIT vs. Vivek Agrawal 231 Taxman 392 (Del) has held that unless the amounts stated the document were actually paid it cannot be presumed that the amount mentioned in the sale deed was not correct.

3.4.12 The Hon'ble M.P. High Court in the case of CIT vs. Kantilal Prabhudas Patel (2008) 296 ITR 568 (MP) has held that the addition cannot be made on guess work or estimates.

4. Turning to the factual matrix of the present case, if we logically analyze the contents of the documents seized from the premises of the broker, Shri Kamal Goyal and its reliability in the light of the documentary evidences submitted by the appellant regarding the actual registered sale documents in respect of plot nos. G-12A and D-20 of N R Estate, the sale price mentioned in the seized documents 64, 66 and 68 of LPS-A3 cannot be made the basis of the estimate made in the appellant's case. It is seen that . the plot nos. G-12A and D-20 have been sold for the first time in March-2013 and at rates of Rs. 300 per sq. ft. and Rs. 325 per sq. ft. respectively. Further, on both page nos. 64 and 68 the plot no. mentioned is G-12A but the rates written on page nos. 64 and 68 are 1211 and 1311. In view of these facts the Assessing Officer was not correct in estimating the sales of the appellant on the basis of the notings on page nos. 64, 66 and 68 of LPS-A3 seized from the premises of Shri Kamal Goyal.

4.1 On careful consideration of entire material placed before me, inter alia the assessment order and the submissions made in the appeal proceedings, it is seen that no effort has been made by the Assessing Officer of making any further investigation or inquiry and he has simply proceeded to make additions on the basis of the documents in question which is not an acceptable, sustainable and justified approach. The Assessing officer has accepted the rates mentioned in the seized documents page noS. 64, 66 and 68 of LPS-A3 but has not brought out any corroborative material to show that the inference made by him is correct and sustainable.

4.2 The appellant company had no dealings with the broker, Shri Kamal Goyal and the Assessing Officer has also not disputed this fact.

4.3 Further, the appellant had asked for opportunity to cross examine the witness during the assessment proceedings which was not given to the appellant.

4.4 In view of the facts and circumstances of the case and the discussions in the preceding paragraphs, the addition of Rs. 1,02,95,645/- for AY 2009-10, Rs. 96,92,400/- for A.Y. 2010-11, Rs. 1,22,81,10<sup>0</sup>/ - for A.Y. 2011- 12, Rs. 2,72,71,700/- for A.Y. 2012-13 and Rs. 13,31,01,675/- for A.Y. 2013-14 made on account of estimation of sale consideration on the basis of seized document, Page Nos. 64, 66 and 68 of LPS-A3 found from the premises of the broker, Shri Kamal Goyal is hereby deleted. Ground Nos. 2,3 and4 for A.Ys 2009-10 to 2012-13 and Ground

Nos. 2 and 3 for A.Y 2013-14 are allowed.

20. In the case of another assessee namely M/s N.R. Company which was decided by the Ld. A.O on a later date similar addition was made which was also struck off by Ld. CIT(A) referring to the finding of Ld. CIT(A) given in the case of M/s N.R. Finance Pvt. Ltd observing as follows:-

**2.7** As can be seen from the above, the additions made on account of estimation of sale consideration on the basis of the seized documents Page Nos. 64, 66 and 68 of LPS-A3 found from the premises of the broker, **Shri Kamal Goyal have not been sustained in the case of M/s N.R. Finance Pvt. Ltd.** During the course of assessment proceedings M/s N. R. Finance Pvt. Ltd. had asked for opportunity to cross examine Shri Kamal Goyal but the same was not granted.

**2.8** The Assessing Officer during the course of assessment proceedings of the appellant company issued summons to Shri Kamal Goyal who filed his submissions on 30/11/2015. The same are reproduced as under:-

"During the course of summon proceeding as issued U/s 131 of the Income Tax Act, you have shown certain papers as found and seized during the course of search in my residential and business premises wherein certain details were recorded in connection with the sale and purchase of plots in NR Estates. In this respect I have to submit as under:-

1} I have seen all the papers as shown by you at the time of hearing which was seized during the course of search in my possession.

2.1} I act as a property broker and engaged in the business c  
purchase and sale of plots houses etc.

2,2} That in broking business entire transactions were executed  
through brokers only and we are not in touch with the  
actual buyer and seller.

2.3} That in most of the transactions three brokers involved for  
execution of a deal, one broker represent the seller party,  
one represent the buyer and third one who know both the  
brokers and therefore brokerage as received distributed  
amongst the three brokers.

3.1} That on Page No 64, detail of Plot No G-12A of 4800 Sq Fts which  
was sold at Rs 1211/- Per Sq Fts was recorded. That on right side name  
of the broker of seller and buyer was recorded. The said transaction was  
executed on 01-05-2012.

3.2} That on Page No 66, detail of Plot No D-20 of 4800 Sq Fts which  
was sold at Rs 1225/- Per Sq Fts was recorded. That on right side name  
of the broker of seller and buyer was recorded. The said transaction was  
executed on 15-05-2012.

3.3} That on Page No 68, detail of Plot No G-12A of 4800 Sq Fts which  
was again sold at Rs 1311/- Per Sq Fts was recorded. That on right side  
name of the broker of seller and buyer was recorded. The said transaction  
was executed on 27-05-2012.

3.4} That on Page No 29 of A-5 is the copy of ledger wherein the amount  
as received by me from the broker of buyer and also paid to the broker of  
seller was recorded for my memory purposes.

3.5} That on Page No 5 of A- 16 is the memory paid wherein the rate of  
different plots of different colony was noted. That plots which are available  
for sale was recorded in this page. That no financial transaction was  
recorded in this page.

*This letter may please be treated as compliance to the summon as issued U/ s 131 of the Income Tax Act. "*

**2.9** *Shri Kamal Goyal in his reply has reiterated the notings on page nos. 64, 66 and 68 of the seized diary. The appellant had submitted before the Assessing Officer that it had no business connection with the broker Shri Kamal Goyal and had submitted the detailed chart with the names of the parties to whom the said plots mentioned in the seized documents were sold. Here also the Assessing Officer did not give the opportunity to the appellant to cross examine Shri Kamal Goyal. The appellant in its submissions has placed reliance on various decisions wherein it is held that as part of principles of natural justice opportunity of cross examination should be provided.*

**2.10** *In this context reliance is placed on decision of Hon'ble ITAT, Indore in the case of Shri Mahendra Kumar Agrawal in ITA No. 742/Ind/2015 dated 05/07/2016 wherein in it is held that it is a settled proposition of law that before using any material received or statement recorded behind the back of the assessee of a third party, the same should be confronted to the assessee, otherwise the same material cannot be used or read against the assessee. The Hon'ble ITAT has relied on the recent decision of the Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT in ITA No. 58 of 2001 in its order dated 30/06/2016 wherein it is held that the revenue was not justified in making addition at the time of reassessment without having given the assessee an opportunity to cross examine the deponent on the statement relied upon by the ACIT. Forget about denial of cross examination, the Revenue did not even provide the material on the basis of which the Department short to conclude that the loan was bogus transaction. This not having been done, the denial of such opportunity goes to the root of*

*the matter and strikes at the very foundation of the reassessment. Further reliance is placed on the decision of Hon'ble M. P. High Court in the case of Prakash Chandra Nahta V / s CIT 201 ITR 134.*

**2.11** *The Assessing Officer has primarily relied upon the notings on page nos. 64, 66 and 68 of the diary seized from Shri Kamal Goyal. As discussed above, the additions made on basis of the said notings have been deleted in the case of M/s N.R. Finance Pvt. Ltd. Further, the statement of Shri Kamal Goyal cannot be relied upon as the Assessing Officer has not provided the opportunity of cross examination to the appellant and it goes against the principles of natural justice. It is seen that no effort has been made by the Assessing Officer of making any further investigation or inquiry and additions have been made simply on the basis of the aforementioned documents which is not an acceptable, sustainable and justified approach. The Assessing Officer has accepted the rates mentioned in the seized documents page nos 64, 66 and 68 of LPS-A3 seized from the premises of Shri Kamal Goyal but has not brought out any corroborative material to show that the inference made by her is correct and sustainable.*

**2.12** *In view of the above, the addition of Rs.1,89,47,147/- made on account of undisclosed receipts from sale of plots is deleted and this ground of appeal is allowed.*

21. The above finding of Ld. CIT(A) in the case of both the assessee(s) with respect to the issues were similar and therefore the finding of only one of the assessment year of respective assessee has been reproduced above. Appeals of the revenue for some of the

assessment years got dismissed on account of low tax effect on the basis of CBDT Circular No 17 of 2019 Dated 8th August 2019.

22. Now the question before us is that “whether the Ld. A.O was justified in applying the estimated rate per sq. feet of land for the plots sold by both the assessee(s) as against the sales shown in the regular books of accounts duly evidenced by registered sale deeds”?

23. We observe that in the alleged seized diary found from the premises of Mr. Kamal Goyal there was information of few plots of land and the rate of sale per sq.feet was ranging from Rs.1150/- to Rs.1131/- per sq.ft but the Ld. A.O failed to record the basis for adopting Rs.500/- Rs.900/- and Rs.1300/- for Assessment Year 2009-10, 2011-12 and 2013-14 and the same is purely an estimate. Even the Ld. A.O has failed to take any valuation report from Departmental Valuation Officer to support the rate adopted by him.

24. We also observe that no incriminating material was found from the premises of M/s N.R. Finance Pvt. Ltd and similarly no evidence was gathered in the case of M/s N.R. Company to show that any consideration over and above the disclosed sale consideration in the books of accounts has been received. It is not in dispute that the

sales recorded in the books of assessee are duly supported by registered sale deed signed by both the buyers and sellers and stating the consideration paid/received before the registering authority and transaction has taken place through proper banking channel. Ld. A.O has not rejected the books of accounts u/s 145(2) of the Act.

25. We further observe that revenue has failed to prove that both the assessee(s) ever entered into any transaction of any nature with Mr. Kamal Goyal. Even in the affidavit given by Mr. Kamal Goyal he has not stated anything about the assessee(s) except that some plot of land of 'N.R. Estate' was sold and it is also pertinent to note that even after specific request assessee was not offered any opportunity to cross examine Mr. Kamal Goyal which itself defies the principal of natural justice.

26. We observe that the contents of the seized diary showing few transactions of sale of plot at 'N.R. Estate' are totally different with the actual transaction which took place for plot numbers mentioned in the seized diary. Besides the mismatching of dates and names even the actual plot size do not tally. This fact is more clear from the following chart showing relevant information about the

mismatch of details available in the diary vis-à-vis the actual sales dates.

As per Diary					As per Sale Proceed/Sale Deed & agreement)				
Mentioned in Diary	Plot No	Area (Sq.ft)	Rate of sale	Name of purchaser	Date of sale	Plot No	Area (Sq.ft)	Rate of sale	Name of purchaser
I-May-12	G12A	4800	1211	Sanjiv Gaang	7-Mar-13	G12A	4833	300	Shweta Kedia
15-May-12	D 20	4800	1225	AI	25-Mar-13	D20	4779	325	Shradha Jain
--	G18	4000	1150	Himanshu	28-Mar-13	G 18	4801	269.640075	N.R. Finances Pvt. Ltd
--	134	3600	1150	Himanshu	29-Mar-12	134	3599	300	Deepak Bhatia
--	135	3600	1150	Himanshu	28-Mar-13	135	3599	325	Punit Mandhwani
--	F 19	4000	1300	Himanshu	5-Nov-12	F 19	4001	349.912522	Namrta Lalwani
--	F22	4000	1300	Himanshu	11-Aug-12	F22	4001	269.64009	N.R. Finances Pvt. Ltd
--	D 18		1150	OK	28-Mar-13	D 18	4001	269.46009	N.R. Finances Pvt. Ltd
--	140		1100	OK	20-Jan-12	140	3595	300.417246	Manju Sati
--	141		1100	OK		141	3595	Not sale till date	
--	D 16		1125	OK	31-Mar-13	D 16	6415	325.779423	Vikash Thakar
--	D 17		1125	OK	30-Mar-13	D 17	7578	325	Umrani Yadav
--	C6	6500	1250	OK	28-Mar-13	C6	6074	269.639941	N.R. Finances Pvt. Ltd
--	B 17			CW		B 17	That Plot No. not exist in N .R. estate colony		

27. From the above chart it is very much clear that the information contained in the seized diary which has been heavily relied upon by the Ld. A.O seems to be clueless showing no nexus with the actual transaction took place. There is no mention of the assessee firms name in the diary. The broker Mr. Kamal Goyal has also not uttered a word about having entered into any transaction with the assessee(s) except the notings made in the seized diary. Ld. A.O has failed to bring any clinching evidence to support the estimated rate adopted by him. All these facts collectively indicate only one thing that the alleged document i.e. few pages of the seized diary showing some incomplete information about sale of plots at 'N.R. Estate' is merely a dumb document which under no circumstances can be used against the assessee to make the additions.

28. This view is well supported by the judgment of Hon'ble Delhi High Court in the case of *CIT v/s Vatika Landbase (P) Ltd (2016) 383 ITR 320 (Del)* wherein the Hon'ble court held that:-

*“the addition made by the Assessing Officer on the basis of documents found and seized from the computer of an employee of the assessee company showing that the rate of sale of floor space in commercial was higher than the rate shown by the assessee was not sustainable as the*

*rates mentioned in the seized documents did not represent any completed or materialized transaction. Moreover, the Assessing Officer did not make any enquiry from the said employee or from the buyers of flats in respect of actual price paid by them”.*

29. The Hon'ble M.P. High Court in the case of CIT vs. Kantilal Prabhudas Patel (2008) 296 ITR 568 (MP) has also held that the addition cannot be made on guess work or estimates.

30. The Hon'ble Madras High Court in the case of *N. Ramanna Reddy Vs. JCTO* reported in (1971) 28 STC 683 where it is held :-

*that if the taxing authority intends to bring to tax the turnover of dealer, which, according to him, has escaped assessment by reason of deliberate attempt on the part of dealer to avoid net of taxation, then it is fundamental that the dealer so called upon should be given a just and fair trial and indeed a fair opportunity to explain himself with all material on which he could support his case. The essential element in sales are seller, buyer, the goods (here the Plots) and the consideration for sale or purchase of goods and unless a nexus is established between two such persons and convincing proof is available to show that consideration did pass as a result of such sale, it would be difficult to assume that a sale of goods from one person to other has resulted. Where there is no clinching evidence to establish jural relationship of vendor and purchaser, the onus on the department become heavier, for, it should scrutinize the material with lynx eye and afford to the assessee at every material point of time an opportunity to countermand the same or let in evidence to outweigh the weight of such material.*

31. In the light of above stated judicial pronouncements and the facts as narrated above and in the given facts and circumstances of the case we find merit in the finding of Ld. CIT(A) and submission made by both the assessee(s) and are of the considered view that

the additions made by Ld. A.O applying the estimated rate of per sq. feet of land sold by both the assessee(s) seems to be purely a guess works and is merely made on surmises and conjectures and the impugned additions has thus been rightly deleted by Ld. CIT(A) in view of our following finding:-

(i) The alleged seized document in the form of Page No.64, 66 and 68 of LPS-A3 seized diary found from the premises of Mr. Kamal Goyal is merely a 'dumb document' having no direct nexus with any transactions of sale of plot of land in 'N.R. Estate' having carried out by any of the assessee(s) namely M/s N.R. Finance Pvt. Ltd and M/s N.R. Company.

(ii) No other corroborative or clinching evidence has been brought on record by the Ld. A.O to prove that any amount over and above the sale consideration declared in the books of accounts of the assessee(s) was ever received by the respective assessee(s).

(iii) No opportunity of cross examination with Mr. Kamal Goyal was provided even though requested by both the assessee(s).

(iv) No proof of any financial transaction ever taken place between the broker Mr. Kamal Goyal and two assessee(s)

namely M/s N.R. Finance Pvt. Ltd & M/s N.R. Company. Ld. A.O has himself mentioned the phrase that “brokerage might have been very much in cash” in the assessment order which shows that Ld. A.O himself was not certain about the transaction of brokerage.

(v) No other effort was made by Ld. A.O to enquire from the plot holders so as to prove that excess amount was paid by them to the assessee.

32. In the result finding of Ld. CIT(A) is confirmed and the respective grounds of Revenue challenging the deletion of additions at Rs.2,72,71,700/- and Rs.13,31,01,675/- for Assessment Year 2012-13 and Assessment Year 2013-14 in the case of M/s N.R. Finance Pvt. Ltd and challenging the deletion of addition of Rs. 1,89,47,147/-, Rs. 3,41,02,145/-, Rs. 21,11,75,397/- and Rs. 33,72,67,720/- for Assessment Years 2009-10, 2011-12, 2012-13 and 2013-14 respectively in the case of M/s N.R. Company are dismissed.

33. Now we take up the additional ground raised by the revenue in the case of M/s N.R. Finance Pvt. Ltd for Assessment Years 2012-13 and 2013-14 contending that Ld. CIT(A) erred in accepting the

additional evidence in the form of registered sale deeds without giving any opportunity to the Ld. A.O as provided under Rule 46A of the I.T. rules and also not calling of Remand Report.

34. We have heard rival contentions and perused the records placed before us. We find that evidence indicated by the Ld. Departmental Representative is registered sale deeds. There is no dispute to the fact that registered sale deed is available on public domain. The transaction of purchase and sale of immoveable property are registered before the registering authority appointed by the Government and the documents are available on public domain. These documents could have been called for by the Ld. A.O without informing the assessee(s). In these given facts and circumstances of the case and also under the provisions of I.T. Act which provides co-terminus power to Ld. CIT(A) as are there with the Ld. A.O, we are of the considered view that the alleged additional evidence cannot be categorized as additional evidence for the issue raised in the instant appeals. We accordingly dismiss the additional ground raised by the revenue in the case of M/s N.R. Finance Pvt. Ltd for Assessment Year 2012-13 and 2013-14.

35. Now we take up Ground No.3 of Revenue's appeal for Assessment Year 2013-14 in the case of M/s N.R. Company challenging the deletion of addition of Rs.15,67,401/- by Ld. CIT(A) which was made by the Ld. A.O for the excess development charges claimed by the assessee.

36. Brief facts relating to this issue are that during the course of scrutiny proceedings on perusal of P&L account along with the computation of income of the assessee for the F.Y 2012-13, it was found that the assessee has debited Development Charges of Rs.7,38,24,795/- on account of expenses and provisions at Rs.3,65,38,200/- and Rs.3,72,86,595/- respectively on total sales of plots of Rs.19.93 crores after developing the same with closing stock of Rs. 1.22 crores. The assessee was asked to explain the same with documentary evidence. Submission made by the assessee were considered but not found acceptable by Ld. A.O who disallowed development charges to the extent of Rs. 15,67,401/- observing as follows:-

*5.2 After considering the above submission it is found that the assessee has given total area of 473221 sq. ft. against development charges as against 468396 sq. ft. agreed upon as per supplementary agreement*

*dated 05/04/2008. During the year the charges debited in P&L account are therefore excess by 4825 sq. ft. i.e. (4825 X 269) = 12,97,925/-. Since this amount is paid in excess of expenditure to be incurred u/s. 37(1) under this head the assessee was asked to explain the same. Also the excessive expenditure incurred on this excess area @ 55.85 per sq. ft. i.e. (4825 X 55.85 per sq. ft.) = 269476/- is not allowable . The assessee has not given any satisfactory reply for the same stating that the difference may be due to the reason of differences in plots size given to the developer at the time of actual possession. The assessee has admitted that the extra charges are paid beyond the agreement amounting to Rs. 15,67,401/- (Rs. 12,97,925/- plus Rs. 2,69,476/-) and therefore the same are disallowed u/s. 37(1) and added back to the total income.*

37. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded.

38. Now the revenue is in appeal before the Tribunal.

39. Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

40. Per contra Ld. Counsel for the assessee relied the finding of Ld. CIT(A) and also referred to the following written submissions reproduced below:-

b) Disallowance of development expenses to the tune of Rs 1567401/-

With reference to the addition on account of disallowance of alleged excess claim of Development charges, it is submitted as under:

- a) M/s. N.R. Co. the assessee is the original land owner of the Project named and sold as "N.R.Estate".
- b)The assessee firm on 04/04/2007 had entered into a development agreement with M/s. N.R. Finance (a non-related concern though there is a similarity in name) and as per the agreement, the development of the land was to be made by M/s N.R. Finance. Copy of Agreement is enclosed herewith.
- c)The total development amount agreed was Rs.23,11,00,000/- for the total Plot area of 14,63,796 Sq. Ft.
- d)Thus the Development cost worked out to Rs. 157.87 per Sq. ft. This Development cost was debited in the Books of accounts year wise as per the Bill received from the developer on the basis of actual work completed during each respective year.
- e)When the assessee firm could not pay the Development amount to the developer, it mutually entered into a Supplementary Development Agreement dated 05/04/2008 with the developer. The copy of Agreement is also enclosed herewith. As per this Supplementary Development agreement, the assessee firm agreed to give developed plots to the developer.
- f)These developed plots were of the sold plots to the developer. Details developer is enclosed herewith. The said sales are included in the gross sales shown by the assessee as per trading a/c enclosed herewith.
- g)Out of the total plot area of 14,63,796 Sq. ft. ,total area of 4,68,396 sq. ft of area was agreed to be given to the developer M/s N.R. Finances Pvt. Ltd.' against the remaining development charges of Rs 12,63,00,000/- as per Supplementary Development Agreement dated 05/04/2008.

h)Thus the selling rate per sq. ft. worked out to Rs. 269/64 . which was agreed between the parties way back in 2008.

i)Accordingly as per the development work completed by the developer, the part of the agreed area was year wise given to the developer as per details enclosed herewith.

j)In the year under consideration out of the total area of 6,67,591 sq. ft., area of 3,21,445 sq. ft was given to the developer whereas remaining area of 3,46,146 was sold to third parties as per details enclosed herewith.

k)Thus as against 4,68,396 sq. ft agreed to be sold to the developer, a total of 4,73,221 sq. ft was sold to the developer.

l)Overall 4,825 sq. ft. extra area was given (sold) to the developer throughout various assessment years.

m)The addition made on this account is not justified because when the extra area sold to the Developer is already included in the -Gross sales just like . sales to other parties and the profit arising thereon has already been offered for tax just like other sales to third parties, where is the question for disallowance of Development expenses when the appellant assessee has charged for the said area.

n)In practical it may be a position that when the appellant assessee could not find a buyer of a plot in the open market, it had sold the plot to the Developer just like sales to other parties and accordingly credited the sales a/c and debited the account of the developer.

o)It may further be appreciated that against the total PIN area of 14,63,796 Sq. Ft. to be developed by the Developer, only 12.87,315 sq. ft. was developed by the developer up to AY 13-14 details of which are enclosed herewith. Thus there is no claim of extra development charges

since development expenses have been claimed for 12,87,315 sq. ft. as per bills year wise received from the developer copy of which are enclosed herewith. TDS was also deducted accordingly.

In view of the aforesaid submissions, the Departmental appeal deserves to be dismissed and oblige.

41. We have heard rival contentions and perused the records placed before us. Through Ground No.3 for Assessment Year 2013-14 in the case of M/s N.R. Company the revenue has challenged the deletion of addition made by Ld. A.O towards development charges at Rs.15,67,401/-. We observe that as per the agreement between the assessee and M/s N.R. Finance Pvt. Ltd 468396 sq.ft of area was agreed to be given to developer M/s N.R. Finance Pvt. Ltd (In short 'NRFL') against the agreed development charges of Rs. 12.63 crores. Selling rate was fixed in the year 2008 at Rs. 269.64/- per sq. Ft but finally as against the 468396 sq. ft of land agreed to be sold to the developer, 473221 sq. ft of land was sold, in other words 4825 sq. ft of extra area was given. Ld. A.O denied the benefit of development charges computed at Rs.15,67,401/. on this extra land sold to developer at 4825 sq. Ft. Ld. CIT(A) deleted this addition observing as follows:-

8.2 It is true that as against total area of 4,68,396 sq. Ft to be sold to the developer as per the supplementary agreement dated 05/04/2008 the appellant has sold extra 4825 sq. Ft totalling to 4,73,221 sq. ft. However, the extra area sold to the developer is already included in the gross sales booked by the appellant and the development charges debited in the books of accounts are @ 157.87 sq. Ft for 4,68,396 sq. Ft only. The account of the developer has been placed on record. The year wise development charges paid to N.R. Finance Pvt. Ltd is as under :-

Fin. Year	Area	Amount	Service	VAT	Bill Amount	TDS
2008-09	170000	26839600	1105792	536792	28482184	645404
2009-10	258727	40847817	1682930	816956	43347703	877694
2010-11	226471	35755250	1473116	715105	37943471	758869
2011-12	415714	65633000	2704080	1312660	69647740	1392998
2012-13	216403	34165730	1689155	683315	36538200	730764
	1287315	203241397	8655073	4064828	215901298	4405729

8.3 It is seen that there is no discrepancy in the above account of the developer and no extra payment has been made. For the extra area of 4825 sq. ft the sales have been booked in the P&L account. The total sales for A.Y 2013-14 amount to Rs.50,11,64,604/- which include a sum of Rs.12,75,99,330/- on account of Rs.4,73,221/- sq. ft of developed plots given to M/s N.R Finance Pvt. Ltd as per the supplementary agreement. The ledger account of the development charges paid to M/s N.R. Finance Pvt. Ltd is also placed on record for F.Ys. 2008-09 to 2012-13 and it is seen that the total development charges paid till F.Y 2012-13 amount to only Rs.20,32,41,397/-. Therefore, no excess development charges have been paid by the appellant company.

8.4 In view of the above, the addition of Rs.15,67,401/- is deleted. Ground No.2 is allowed.

42. From perusal of the finding of Ld. CIT(A) we find no inconsistency since sale consideration received from sale of extra land to M/s N.R. Finance Pvt. Ltd is already included in the gross sales shown by the assessee and the profit arising there from has been offered to tax. This fact is duly verifiable from the

development charges paid to M/s N.R. Finance Pvt. Ltd for Assessment Year 2009-10 to Assessment Year 2013-14. We thus confirm the finding of Ld. CIT(A) and dismiss Ground No.3 raised by the revenue for Assessment Year 2013-14 in the case of M/s N.R. Company.

43. Now we take up the Cross Objections filed by the assessee namely M/s N.R. Finance Pvt. Ltd for Assessment Year 2012-13 and Assessment Year 2013-14 raising the issue that no opportunity was not given to cross examine the broker Mr. Kamal Goyal about the contents appearing in the seized diary. We find that since we have already dismissed Revenue's appeal and confirmed the finding of Ld. CIT(A) deleting the impugned addition made by Ld. A.O by estimating the unaccounted sales applying the estimated rate of sale per sq. ft of land sold, but still for academic purpose we decide to deal with this issue also.

44. In the preceding paras we have already made specific observation that the action of Ld. A.O of making additions based on the third party information without providing opportunity of cross examination defies the principal of natural justice which the assessee is duly eligible for. There is sufficient merit in the

assessee's cross objection since the specific request was made to Ld. A.O for providing cross examination but the same was denied. Thus even on this legal issue itself the assessee deserves to succeed and the additions made by Ld. A.O based on the seized document found from the premises of broker Mr. Kamal Goyal deserves to be deleted. In the result Grounds raised by the assessee in Cross Objections for Assessment Years 2012-13 and 2013-14 are allowed in the case of M/s N.R. Finance Pvt. Ltd.

45. In the result all the grounds raised by the revenue in the case of M/s N.R. Finance Pvt. Ltd and M/s. N.R. Company are dismissed and accordingly all the appeals of Revenue vide IT(SS) A No. 201, ITA Nos.1043/Ind/2016, 204,206,207/Ind/2018 & 423/Ind/2017 are dismissed and the Cross Objection raised by the assessee namely M/s N.R. Finance Pvt. Ltd vide CO Nos. 39&40/Ind/2018 are allowed as per the terms indicated above.

Order was pronounced in the open court on 09.03.2021

Sd/-

(KUL BHARAT)  
JUDICIAL MEMBER

Indore; दिनांक Dated : 09/03/2021  
/Dev

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

*N.R. Company & N.R.Finance Ltd.*  
*ITA No.204,206,207/Ind/2018 & 423/Ind/2017&Ors*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**

