

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 1348/JP/2018
निर्धारण वर्ष / Assessment Year :2015-16

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| A.C.I.T., Circle-1, Kota. | बनाम Vs. | M/s Shri Ganpati Developers, C-150, Road No. 5, I.P.I.A., Kota. |
| स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABZFS 8967 Q | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

C.O. No. 08/JP/2019
(Arising out of ITA No. 1348/JP/2018)
(Assessment Year: 2015-16)

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| M/s Shri Ganpati Developers, C-150, Road No. 5, I.P.I.A., Kota. | बनाम Vs. | A.C.I.T., Circle-1, Kota. |
| स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ABZFS 8967 Q | | |
| Objector | | Respondent |

राजस्व की ओर से / Revenue by: Smt. Rooni Paul (Addl.CIT-DR)
निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA) &
Shri C.M. Birla (CA)

सुनवाई की तारीख / Date of Hearing : 24/02/2021
उदघोषणा की तारीख / Date of Pronouncement : 30/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The appeal filed by the revenue and the cross objection filed by the assessee arise against the order of the Id. CIT(A), Kota dated 07/09/2018 for the A.Y. 2015-16. The grounds taken in the revenue's appeal and assessee's C.O. are as under:

“Grounds of Revenue’s appeal:

1. *On the facts and in the circumstances of the case, the Id. CIT(A) has erred in restricting addition made by A.O. of Rs. 1,85,30,430/- on account of undisclosed income to Rs. 75,630/- without appreciating the facts discussed by the A.O. in the assessment order.*
2. *The appellant craves liberty to raise additional ground and to modify/amend the ground of appeal at the time of hearing.”*

“Grounds of assessee’s C.O.:

1. *That the Hon'ble Commissioner of Income Tax (Appeals) Kota grossly erred in not quashing the assessment order and deleting entire additions of Rs. 18530430/- ignoring that the learned AO has grossly erred in converting the limited scrutiny into complete scrutiny without entire facts before him and thereby making addition of Rs.18530430/-.*
 2. *That under the facts and circumstances of the case the Hon'ble Commissioner of Income Tax (Appeals) Kota also failed to appreciate that as the learned ACIT had grossly erred in moving for conversion from limited scrutiny to complete scrutiny without possession of full facts before him and therefore as Hon'ble Principal CIT, Kota has accorded mechanical approval without considering that sanction sought by learned AO was ignoring CBDT instructions dated 29.12.2015 and 14.07.2016 and therefore it suggests for annulment of order.*
 3. *That the appellant therefore prays for annulment of order.*
 4. *That the appellant craves leave to add, alter, amend, modify and / or otherwise substitute any of the foregoing grounds as and when required.”*
2. The hearing of the appeal and C.O. were concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is a partnership firm and engaged in the business of building and constructions works. The assessee filed its return of income on 28/09/2015 declaring total income of Rs. 41,41,130/-. The case of the assessee was selected for limited scrutiny through CASS and notices were issued. The A.O. completed the assessment on 28/12/2017 and assessing total income of assessee at Rs. 2,26,71,560/- by making addition of Rs. 1,85,30,430/- on account of undisclosed income.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties as well as material placed before him, restricted the addition to the tune of Rs. 75,630/-. Against the impugned order passed by the Id. CIT(A), both i.e. the revenue is in appeal and the assessee is in cross objection before the ITAT.

5. The Id. D.R. appearing on behalf of the Revenue has relied on the order of the A.O. and also relied on the brief facts submitted before the Bench and the same is reproduced below:

"Assessment in the case was completed u/s 143(3) on 28.12.2017 at an income of Rs.2,26,71,560/- as against income of Rs.41,41,130/- declared by the assessee after making addition of Rs. 1,85,30,430/- on account of undisclosed income as per disallowance on account of

provisions. The assessee is a partnership firm & engaged in the business of building & construction works.

At the time of assessment preceding the AO found that as per information received from the Central Circle, Kota, it is found that a search was conducted in the case of Mundra Group, Kota on 13/08/2013. During the course of search proceedings some bunch of incriminating documents were found/seized from searched place. The seized documents of this bunch pertain to the assessee, M/s Shree Ganpati Developers wherein difference was found in sale price of different flats sold by the assessee as per seized books and sale price as per books the total of this difference amount of Rs. 1,85,30,430/-.

Therefore, the assessee was issued a show cause as to why the difference in value calculated above amounting to Rs. 1,85,30,430/- may not be treated income of the assessee and added to the income of the assessee.

In response the assessee submitted his reply. The reply of the assessee has been considered and the same is found to be not acceptable.

At the time of assessment proceeding , considering the submission of assessee and facts available on records AO found that there is a difference of Rs. 1,85,30,430/- between the actual sale consideration recorded as impounded annexure (per page No. 9) and sale price shown in books. Therefore the same is added to the total income of the assessee.

Against the order of the AO assessee moved to the CIT(A) Kota. The CIT(A) allow the appeal of the assessee partly deleted for Rs. 18454800/- out of addition made Rs. 1,85,30,430/-and confirm the

addition for Rs. 75,630/- relying on decision of the various appellate Authority and further stating that :

A.O's examination of Annexure AS-2 was very casual and not based either on the possible further enquiries or workings or on the appreciation of statements and change in the status of several flats & onwards. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences to the fore for establishing his finding. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition. In my 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 earned undisclosed income.

The CIT(A) further stating that :

"I am not inclined to agree with the addition made by the A.O totaling to Rs. 1,85,30,430/- & restrict it to Rs. 75,630/-

The decision of the CIT(A) is not acceptable as the CIT (A) has not appreciated the facts mentioned by the AO in the assessment order :

During the time of assessment proceeding in compliance of show cause the assessee has stated that :

"we just a planning, estimate and subsequently what actually happened, has been considered in the books of accounts and no contrary material has been found that the amount of sale, mentioned in the books o accounts, is wrong. No circumstantial or other evidence has been shown to us that when books of accounts are not treated proper and the sales of flats, mentioned therein, has not been accepted as per the books of accounts. As such, we

request you to consider the sales as per the books of accounts. We also inform you that this is a partnership firm and estimates and planning was made by a partner for future sale on rough paper, which was found at the time of search of their premises, cannot be taken a incriminating document for the sale of the firm...."

The reply of the assessee has been considered and the same is found to be not acceptable. It was further noticed that as per statement of Sh.Anil Mundra recorded u/s 131 of the IT Act on 17/10/2013 in the reply to the question No. 57 has stated as under:

प्रश्न 57 मैं आपको Annexure AS2 के पृष्ठ से 65 दिखा रहा हूँ कृपया इन्हें बुक्स ऑफ Accounts से मिलान करवाये?

उत्तर यह सभी पृष्ठ 4 से 65 मैं. गणपति डवलपर्स, कोटा से संबंधित है उसमें मैं स्वयं अनिल मूंदड़ा व श्री बी.डी. मूंदड़ा भागीदार है। इसके Bank Account Statement, Deed Bal-Suet 11-12 एवं 12-13 दोनों, Bank Loan Account जमीन की रजिस्ट्री की प्रति आपको प्रस्तुत कर दी है।

Further perusal of seized paper page 9 of Annexure AS-2 and books of account the sale price of following flats are same:

| <i>Sr. No.</i> | <i>Flat No.</i> | <i>Area</i> | <i>Rate</i> | <i>Total Amount as per page-9</i> | <i>Sales shown in books amount</i> |
|----------------|-----------------|--------------|--------------|-----------------------------------|------------------------------------|
| <i>1</i> | <i>202</i> | <i>1,635</i> | <i>3,550</i> | <i>58,04,250</i> | <i>58,00,000</i> |
| <i>2</i> | <i>302</i> | <i>1,635</i> | <i>3,550</i> | <i>58,04,250</i> | <i>58,00,000</i> |

From the above chart and statement of Sh. Anil Mundra, it was noticed that this paper is not a rough paper but the sale price mentioned in this paper is actual sale price. Further looking to the sale price of flat No. 202 & 302, it is evident that the sale amount shown on this paper and

in books are same, Considering the facts that sale price shown on this paper are actual and Sh. Anil Mundra has also stated that this paper belongs to M/s Shri Ganpati Developers. From the above it is clear that there is a difference of Rs.1,85,30,430/- between the actual sale consideration recorded as per page No. 9 of annexure and sale price shown in books.

The tax effect involved in the case being Rs. 59,87,336/-, which is more than the limit prescribe by the Board vide Circular No.03/2018 for filing appeal before the Hon'ble ITAT. Therefore, further appeal is recommended against the order of the CIT(A), Kota."

The Id DR has relied on the following judicial pronouncements:

(i) K.Sakthivel Vs The ACIT TCA No. 1083 of 2005, dated 14/06/2012

(ii) CIT Vs M/s Hotel Meriya, ITA No. 551 of 2009, dated 26/05/2010 of Kerala High Court."

6. On the other hand, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and relied on the written submissions filed before the Bench and the same is reproduced below:

"1. *That Annexure AS2 which is seized. from residence of Shri BD Mundra /Anil Mundra both partners of this firm has 65 pages of which Page 9 is centre of controversy.*

2. *That though during statement u/s 132(4) no question in relation to AS2 were asked by search team but during post search proceedings before learned ADIT (Investigation) statement of Shri Anil Mundra Partner of the Appellant firm were taken u/s 131 wherein on 12.11.2013 and 0.11..2013¹ he explained every page of AS2 and each item, of Page 9 of AS2. After his statement it appears the learned ADIT (Investigation) was satisfied because he did not call for any information on these papers which is reflected from page 16 of first Appeal Order also. (Already quoted in Para VII of Facts)*

3. *That as stated above Annexure AS2 has 65 pages of which Page 10 to 65 relates to Page 9. The Id. AO however concentrated his entire focus on one page, i.e. Page 9 & ignored all other pages. Since beginning the appellant assessee has submitted that this Page 9 was a 'DUMMY SHEET'. This is evidenced from the following facts:-*
 - (i) *As per this sheet there is planning of 24 flats whereas later 33 flats are constructed and sold.*
 - (ii) *Many buyers as per this sheet and actual buyers are different. Flat area mentioned in this sheet and actual area sold are also different.*

4. *The Ld. AO failed to understand that when 33 flats were finally planned as against 24 flats planned in sheet 9, the areas of all flats was reduced & therefore the price also got reduced.*

We have taken extract of sale of 9 disputed flats in PB 6 & 7 of Vol-III and after taking area of flat as per books/sale deeds have worked out it's difference which comes at Rs.124752851-. As there is no difference in sale of flat no.804 as per AS9 and sale

deed however Id. AO has taken it's value excess by Rs.1512980/L. Total of Rs.12475285/- comes to Rs.13988265/-. Rest difference of Rs.4542165/- is because in many cases flats construction is up to Skelton Stage only

5. *That we draw your kind attention to PB 82 Vol-I and from which following facts are verifiable:-*
 - (a) *That buyers of flat no. 102, 403 and 804 are same persons mentioned in Page 9. However Sale Price is affected because flats sold are skeleton and flat area is also reduced.*
 - (b) *That purchasers of flat no. 203, 603, 701, 702, 703 and 104 are different persons than those dummy mentioned in Page 9 of AS-2;- flats sold are skeleton and flat area is also reduced.*
 - (c) *That Sale Price is accepted by Service Tax Authorities.*
 - (d) *That sale price' is accepted by District Stamp Authorities i.e. there is no variation in sale price as shown in Sale Deed and as determined by Stamp Authorities.*
6. *That all purchasers are assessed to tax. Their PANs are given in Sale Deeds. However no enquiries are made from them.*
7. *The Id. AO as such totally ignored all these facts and just concentrating on figures mentioned in this Dummy Sheet (Page 9) made addition of Rs.18530430/-.While doing so, the Id. AO erred in taking sale price of Flat No. 804 at Rs.4491080/- which was mentioned in Page 9 of AS2 also t Rs.2978100/- which the Id. AO in his Assessment Order mentioned as Rs.4491080/- & thus the learned AO made addition of difference Rs.1512980/- also.*

8. *We submit addition made by the Assessing Officer based on the undated and unsigned loose paper which has many noting jottings is not a conclusive evidence and, therefore, the same is not sufficient to make addition. To tax any particular receipt, primary evidence is very much necessary which is missing in this case and unless there is primary evidence, it cannot be considered as conclusive evidence against any person. Reliance in this regard is made on :-*

(i). CIT Vs Shivkani Co. (P) Ltd. 159 ITR 71 (SC) (1986)

(ii) K.P. Varghsre Vs ITO (1981) 131 ITR 597 (SC)

(iii) Baldeo Kishankapoor Vs ACIT 68 ITD 37 (Chd) (TM)(1999)

(iv) JCIT Vs Gramophone Co. India Ltd. (2003) 87 ITD 88 (Bombay)

(V) DCIT Central Vs Shri Krishna Yadav (2011) 12 Taxmann 4 (Hyd)

(vi) ACIT Vs Satyapal Wassan (2007) 295 ITR 80 (MP),

(vii) Devi Lal Gheri Lal Shah Vs DCIT (1995) 127 CTR 135 (Guj)

(viii) CIT Vs Khazan Singh & Brothers (2007) 304 ITR 243 (P&H)

(ix) Daulat Ram Imani Vs DCIT Central (2008) 24 SOT 541 (Mumbai)

(x) CIT Vs Anil Bhalla 322 ITR 191 (Del)(2010)

(xi) CIT Vs M. Aja Babu Hyderabad ITA No.1755, 1756 & 1757/Hyd/2012 (Hyd)

(xii) CIT Vs PV Kalyan Sundaram (2006) 203 CTR (Mad)

(xiii) ACIT Vs Prabhat Oil Mills 52 TV 533 (Ahd)(1995)

We therefore submit that addition of Rs.18530430/- made by the Ld. AO is not at all sustainable and therefore the same be deleted.

9. *Without prejudice to our above submissions we further submit Sir that as per our P&L a/c NP 6n sale of Rs.76226175/- is Rs.4141130/- (PB 83) which gives NP rate of 5.43%. If at all any additional sale is sustained additional income should be worked out thereon @5.43%. Reliance in this regard is placed on:-*

(i) *CIT Vs. President Industries (2000) 158 CTR 372 (Guj)*

(ii) *CIT vs. Gotan Lime Khanij Udhyog (2001) 169 CTR 318 (Raj)*

(iii) *CIT vs. Bakhand Ajit Kumar (2004) 186 CTR 419 (MP)*

(iv) *Man Mohan Sadani vs. CIT (2008) 304 ITR 052 (MP)*

(v) *CIT vs. Inani Marbles (P) Ltd. (2009) 316 ITR 125 (Raj)*

(vi) *Ritesh Kumar Somani vs. ITO— ITA No.618/JP/2011 dated 30.12.2011 (Jaipur ITAT)*

(vii) *Babulal Somani vs. ITO — ITA No. 610/JP/2011 dated 13.01.2012 (Jaipur ITAT)*

10. *Non mentioning of Skeleton in Flat no. 203 by deed writer is a technical flaw. Its sale price is not disputed by Service Tax Authorities and Stamp Authorities. Therefore sustaining addition of Rs.75610/- @ 6% on Sale differences of Rs.1260500/- by Hon'ble CIT(A) is also uncalled for which we agitate. We support rest part of Order of Hon'ble CIT(A).*

11. *We pray that addition of Rs.18530430/- made by the learned AO is uncalled for and the same be deleted. Even addition of Rs.75630/- sustained by the Hon'ble CIT(A) Kota needs deletion."*

7. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well

as cited before us and we have also gone through the orders passed by the revenue authorities. From perusal of the record, we noticed that the Id. CIT(A) has restricted the addition from 1,85,30,430/- to Rs. 75,630/- by holding as under:

*"The **Grounds of appeal no. 2 to 4** pertain to addition made based on a paper (loose sheet) found in possession of Sh. B.D. Mundra, one of the partners in the assessee firm during the course of search proceedings on the Mundra Group on 13/08/2013 & as intimated to the present A.O. by DCIT Central Circle, Kota.*

The seized document is detailed at page 2&3 of the assessment order. As per the A.O. the difference between the sale price mentioned in the page no 9 of Annexure AS-2 (of the seized documents) and that shown in the books of accounts in respect of a flats sold comes to Rs. 1,85,30,430/-.

The assessee in response to show cause given by the A.O. in this regard mentioned that the paper (Annexure AS-2 having 65 pages) was a rough working and had no link with the actual sale. He gave detailed reasoning for contesting the A.O.'s contentions. He mentioned that the actual flats sold were not to the same persons in all cases and there were different prices due to buyers opting for 'skeleton' or 'completed' flats as well.

The A.O. in his order has mentioned at page 7 that in response to question 57, recorded by the ADIT (Inv.) u/s 131 during the post search proceedings, Sh. Anil Mundra Partner had mentioned that he had furnished the account statements, balance sheet etc. to the department. Further he has held examples of 2 flats namely 202 & 303 with the same area &. rate matching the written & final sale

prices which goes to prove that the difference between the actual sale consideration & that as per page 9 of annexure AS-2 is real and to the extent of Rs. 1, 85, 30,430/- & is thus required to be added to the total income of the assessee.

In the course of the appellate proceedings, the case records were obtained. The information is passed on by DCIT Central Circle, Kota to the ACIT Circle-1 Kota, on 31.10.2017 while the search was dated 13.08.2013. No adverse inference had been drawn in this regard by the ADIT (Investigation) while referring the matter to the DCIT Central circle. Further, as per the statement copy of the partner recorded at the time of the post-search proceedings u/s 131 on various dates viz.17.10.2013, 18.10.2013, 22.10.2013, 24.10.2013, 8.11.2013, 09.11.2013, 11&12.11.2013 and on the relevant annexure AS-2 mostly on 13.11.2013, it is noted that Sh. Anil Mundra, Partner, has in response to the questions related to annexure AS-2 pages 4 to 65 mentioned, and elaborated the details of each page which includes the booking forms, agreement, floor plans, area details and said that page no. '9' was a 'dummy sheet' whereby some name of actual buyers and some dummy partners' names are written. He has also mentioned that some buyers initially opted for fully furnished flats & later opted for "skeleton" flats so the difference in price was there but the agreements were finally registered on actual prices. For some flats, part amounts were received till then & some of the partners namely Sh. Ashok Maheshwari, Rajendra Jain, Anil Mundra himself & Bhuvanesh Lahoty's names were on the sheet so as to show to prospective buyers that only a few flats were available for sale.

In response to Q. 58 where specific question has been put up regarding the cash receipts reflected on the page the above situation was claimed. Detailed examination was made in the statements flat wise. However, the A.O. has not brought out flat wise explanation in the order & has

merely relied on the loose paper to make the addition of the difference amount. In response to Q. 64 the authorized officer has asked the details about difference of Rs. 82 'lakhs' noted on the page to be reconciled with the books. In response, the position has been explained by the appellant assessee's partner and no further cross questioning has been resorted to.

Annexure AS-2 seized by the investigation wing had 65 pages as under;-

Page 58 to 65 was agreement with Smt. Prabha Sharma for flat no. 103 for consideration of Rs. 57, 38,000/- (shown in the loose sheet as Kiran Bhai earlier & Prabha Sharma later for 53, 60,500) the sale agreement registered on 23.06.2014 at the same price.

Page 42 to 57 two agreements with Anil Mundra (himself the partner) for flat no. 602 & 601 for Rs. 55 lakhs each, mentioned in the sheet at Rs. 58,04,250/- & 55,20,250/-. **Page 34 to 41** shows agreement for flat no. 302 with Rajesh Maheshwari for Rs. 58 lakhs & was sold as such though in the loose sheet 302 is written against Sh. Brajesh Maheshwari (brother of Rajesh whose name appears in the sheet against flat no. 202 after a cutting of Brajesh's name) the transaction for this flat is complete as the cheque is received on 10.08.2012, then why wrong names appear in the sheet is not clarified by the A.O.

Page 32 & 33 is agreement for flat no. 101 by Sh. Anil Mundra & Sh. Ashok Sharma partners & the purchaser column is blank.

Page 24 to 31 is agreement for sale of flat no. 102 to Sh. Ganpat Lal Sharma for Rs. 40, 05,000/- this PAN is entered on the, agreement. The payment plan is left blank while the sheet mentions

it as Rs. 58, 04,250/-. The registered document dated 05/09/2014 is at Rs. 40 lakhs only for a skeleton structure.

Substantial payments had been received prior to the date of search itself. No adverse finding was brought on record by the A.O. to confirm the difference of Rs. 18 lakhs which also appears in the statements of Sh. Anil Mundra in reply to Q. 60 where itself he had clarified that the difference was due to price of "fully furnished" & 'skeleton' flat and he has finalized a 'skeleton' structure. So it is not as if to coverings for the paper found that registration was done later at a smaller amount or that there was cash consideration mentioned anywhere outside the books etc.

***Page 12 to 23** is agreement with Sh. Arvind Tiwari & Smt. India Tiwari for flat no. 804 for Rs. 29,78,100/- & the same is matching with the loose sheet though the balance there is also written as 15. The same was registered at the same price on 22.10.14. Pages (11-12) also include his cheques from NRO account.*

Pages 6 to 11 are projections of the project profits, costs etc. on which the A.O. has not noted any discrepancies either in costs, expenses or profit percentage based on the same.

Pages 3 to 5 are hooking forms signed by prospective buyers.

Thus, in my view, the A.O. has relied only on the sheet at page 9 of the above referred Annexure AS-2, to make the additions of the difference amount shown in the sheet. In this regard, he has only taken the following 9 flats 'lakshya Tower' out of the total 24 (including 3 blanks) detailed in the sheet namely Flat nos. 102, 203, 403, 603, 701, 702, 703, 104, 86, 804,

His action has several lacunae which are detailed as under-

(1) **It** is seen that there flats no. 203, 603, 701, 702 86 703 & 104 were purchased by different persons than those mentioned in the 'loose sheet' referred to by the A.O. in his order. Their registration documents have also been made available and it is observed that the stamp valuation authority has not recorded any adverse findings on the sale price, which should have been there if the flats were sold at much higher prices than claimed by the assessee.

(2) Despite the availability of the names, other details 86 PAN etc. of the buyers, the A.O. has not cross verified the details of purchase, payments etc. to verify the version advanced by the assessee.

(3) The A.O. has not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by the appellant outside the books of accounts to match with the figures of difference appearing in the loose sheet. In fact he did not even cross check with the partner Sh. Anil Mundra & others regarding the same to establish any difference in their version given at the time of search.

(4) Even in the course of the search proceedings nothing has been brought on record so as to establish any agreements to sell evidencing any cash or unaccounted consideration passing hands between the buyers & the assessee appellant. It is also noteworthy, that no commitment, acceptance of undisclosed sales or disclosure regarding the 'alleged suppressed' consideration has been made in the course of the search proceedings which is the normal trend where suppression or undisclosed receipt etc is detected.

In fact, the matter was not even considered for related assessments u/s 153C which is the norm in cases where related parties are found involved with searched entities by incriminating material etc.

The following case laws may also be referred here-

*In the absence of evidence to establish such on-money payment no addition can be made purely on estimation and suspicion: **Ramakant Umashankar Khetan v. ACIT (2000) 66 TV 378 (Nag.),***

*Similarly, the A.O. cannot estimate and place a higher sale consideration based only on estimation and suspicion. In absence of cogent evidence arbitrarily taking and guessing larger apparent consideration is unsustainable in law: **Pankaj Dayabhai Patel (HUF) v. ACIT (1999) 63 TTJ 790 (Ahd.).***

(5) If the A.O. was convinced that the appellant had suppressed the sale of Rs. 1.85 crores, he should have taxed the profit on the same because if the rate of Rs. 3550/-per square feet was true, then the expenses would also be equally reducible and he has nowhere worked out that there were bogus expenses claimed against the actual sale shown.

(6) The A.O. never made out a case u/s 69C against the buyers or referred the same to their respective A.O. if he really wished to take the matter to a logical conclusion. The absence of the above two steps shows that he made the addition causally and without actually going into the depth of the issue and reaching conclusive findings through proper examination of evidences & persons.

(7) A copy of some of the sale deeds spread from 23.06.2014 to 01.12.2014 shows that in respect of one case, the sale amount is even higher and recorded in the books of accounts as such. In some cases it is clearly mentioned as a 'skeleton' flat in respect of buyers who were not even in the list contained in the loose sheet. Why would the stamp valuation authority assess the flats in same building at different stamp rates if the going 'circle' rate is the same unless there is a conceptual

difference in actual value, is also a point which the A.O. seems to have missed out. Further a perusal of the Service Tax return shows no such discrepancy in the period under review here.

(8) The 'Skelton' flats' rate is coming to Rs. 3200 to Rs. 3400/- per square feet itself while the 'completed' or 'fully furnished' flat is sold @ 4967/- which difference if not real, would involve an adverse finding from both the service tax department as well as the SRO for tax avoidance if some flats of same measurement are sold at different rates to 'accommodate' cash proceeds. No adverse findings have been gathered by the A.O. from these two departments in respect of the assessee's project. The service tax ledger account shows flat wise tax paid from 2011 to 2016 even on individual payments credited. Hence, just on the basis of one loose sheet of paper with miscellaneous, unconfirmed 86 uncorroborated notings, to make an addition of Rs. 1,85, 30,430/ - is not fair as this would also mean a suppressed sale of of about 25% against the shown project revenue and jack up the profit to 30% (5.43% already shows) which appears to be astronomical as well as impractical on a single project. The addition dwells more in the realm of presumption than real.

ITAT, Delhi in the case of Samta Khinda vs. ACIT, Central Circle-22 passed in ITA Nos. 336/Del/2012 & 5515/Del/2013 dated 29.11.2016, held that without any corroborating evidence /material, any of the figures mentioned /appearing on the unsigned loose papers seized / collected by the Department during the course of search /survey, have no evidentially value under the provisions of law even u/s. 292C of the 1.T. Act, 1961.

In the aforesaid case the Tribunal has held as under:-

"8. We have heard both the parties and perused the records, especially the Orders of the revenue authorities and the case laws

cited by the Ld. Counsel of the assessee. In this case search u/ s. 132 of the Act was conducted at the premises of the assessee at 2, Golden Gate, Westend Greens, Rajokari, New Delhi- 110 038 on 6.11.1008. During the course of search a computer printout page 5 of Annexure I was found and seized from the residential premises of the assessee. The seized paper has been shown is a part of the assessment order. On perusal of the same the AO held that RS. 96 lacs has been given by Samta Singh to Sudhiksha Singh in cash which has not been recorded in the books of the assessee. The AO has made an addition of Rs. 96 lacs in the hands of the assessee on the basis of the document seized from the premises of the assessee. We find that the seized document does not have any signature of the assessee. However, it is a computer print which has not been used / maintained / operated by the assessee. On perusing the said seized document, it is clear that certain nothings have been made which cannot be said to be the actual transaction. This is only an unsigned /undated loose paper with the Department to substantiate its stand. No cheque transaction has taken place between the Sudhiksha Singh and the Assessee during the financial year 2008-09. The addition has been made merely on the basis of this loose paper without any corroborating evidence and on conjecture and surmises. Therefore, the presumption u/ s. 292C of the Act is a rebuttable presumption. The presumption as envisaged in section 292C is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to be presumed to be the income of the assessee.

ITAT Jabalpur in the case of ACIT vs Satyapal Wassan (295 1TR (AT) 352 (Jabalpur)) wherein elucidating with respect to the same issue, the Tribunal has 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.

In the case of Anuj Chawla Vs Commissioner of Income Tax (Delhi High Court) in Appeal Number: ITA No. 478/2007, C.M. APPL. 6708/2007 has opined that-

This court has considered the submissions and the relevant materials. The document seized and relevant for this purpose is a loose sheet of paper, containing figures. Against "E-6", the figure '22" is shown. Next to it 'N-8" against which the figure "5" has been scribbled. Three other figures too have been shown. Ipso facto these mean nothing. The AO deduced that these reflected the true value of the property and went ahead to refer the matter to the valuation officer. The latter, in his report, after considering the then prevailing prices and looking at a transaction of 1996, felt that the value of the property was Rs. 18.36 lakhs. In the absence of any credible material pointing at undervaluation, the exercise was unwarranted. Worse, after having secured the valuation report, the AO proceeded in an unprincipled manner, and decided that the true value of the property was Rs. 22 lakhs, bringing the balance '13 lakhs to tax. This court is of the opinion that the material found was sketchy and insufficient to warrant a fresh valuation. In any case, the AO's order did not even go by the valuation report, but on an entirely different footing- not based

on any principle at all. Therefore, the addition has to be set as and is accordingly set aside.

*ITAT Hyderabad 'B' Bench in the case of DCIT vs **M. Aja Babu** in ITA No. 1755, 1756 86 1757/HYD/2012 dated 23.04.2014 following the decision of Hon'ble High Court of Delhi in the case of **CIT vs Anil Bhalla** (322 ITR 191 (Del)), **CIT vs Dinesh Jain WWI** 211 Taxman 23 (Del) and **CIT vs Jaipal Aggarwal** 212 Taxman 1 (Del), ITAT Mumbai in the case of **ACIT vs. JP Morgan India Pvt. Ltd.** 46 SOT 250(Mumbai) has 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 apex court in **Central Bureau of Investigation v. V.C. Shukla** (1998) 3 SCC 410 has laid down that :-*

"File containing loose sheets of papers are not book and hence entries therein are not admissible under section 34 of the Evidence Act, 1872."

***In Riveria Properties (P) Ltd. Vs. ITO (ITAT Mumbai)** in ITA No. 250/Mum/2013 86 ITA No. 2748/Mum/2016 Date of Judgement/Order: 27/10/2017 held that-*

Assessing officer is not correct in coming to the conclusion that on money is exchanged between the parties based on a loose sheet found in the premises of a third person. To sustain the addition, the assessing officer should have conducted an independent inquiry about the value of the property and ascertain whether any 'under valuation is done, if so what is the correct value of the property. Further, the assessing officer did not brought on record any evidence to support his contention to say that there is on-money exchanged between the parties. In the absence of proper inquiry and sufficient evidences, we find no reason to confirm addition made by the

assessing officer towards on money. Therefore, we direct the assessing officer to delete addition of Rs. 3,05,00,000 made towards on money.

Thus, it is clear that the A.O.'s examination of the Annexure AS-2 was very casual and not based either on the possible further enquiries or workings or on the appreciation of statements and change in the status of several flats & owners. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences to the fore for establishing his finding. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition. In my 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 earned undisclosed income. Noting on the note book/diar3r/loose sheets are required to be supported/corroborated by other evidence and should also include the statement of a person who admittedly is a 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. These crucial elements are found missing in the Assessment order.

However, it may be added that from a perusal of Annexure `E' filed by the A/R at the time of the appellate proceedings, it is seen that in respect of flat no. 203, ultimately sold to Sh. Anil Kumar Shukla, the difference of Rs. 12, 60,500/- as per the loose sheet is not clear in so far as the status of the flat is concerned. The A/R could not clarify the position in this regard that the flat sold was "skeleton" or not. This difference amount is, therefore considered as the undisclosed amount and profit portion on this difference amount is worked out at Rs.

75,630/-@ 6%. Addition to this extent is confirmed. Under the facts & circumstances as discussed above & the legal precedents available in this regard, I am not inclined to agree with the addition made by the A.O. totaling to Rs. 1,85,30,430/- & restrict it to Rs. 75,630/- .

The balance addition is directed to be deleted.”

8. From perusal of the impugned order, we observed that the Id. CIT(A) restricted the addition by holding that by making addition, the A.O. made a basis on a paper (loose sheet) found in possession of Sh. B.D. Mundra, one of the partners in the assessee firm during the course of search proceedings on Mundra Group on 13/08/2013 & as intimated to the present A.O. by DCIT Central Circle, Kota. The seized document is detailed at page 2&3 of the assessment order. As per the A.O. the difference between the sale price mentioned in the page no 9 of Annexure AS-2 (of the seized documents) and that shown in the books of accounts in respect of a flats sold comes to Rs. 1,85,30,430/-. The assessee in response to show cause given by the A.O. in this regard mentioned that the paper (Annexure AS-2 having 65 pages) was a rough working and had no link with the actual sale. He mentioned that the actual flats sold were not to the same persons in all cases and there were different prices due to buyers opting for 'skeleton' or 'completed' flats as well. As per the statement copy of the partner recorded at the time of the post-search proceedings u/s 131 on various dates viz. 17.10.2013,

18.10.2013, 22.10,2013, 24.10.2013, 8.11.2013, 09.11.2013, 11&12.11.2013 and on the relevant annexure AS-2 mostly on 13.11.2013, it is noted that Sh. Anil Mundra, Partner, has in response to the questions related to annexure AS-2 pages 4 to 65 mentioned and elaborated the details of each page which includes the booking forms, agreement, floor plans, area details and said that page no. '9' was a 'dummy sheet' whereby some name of actual buyers and some dummy partners' names are written. He has also mentioned that some buyers initially opted for fully furnished flats & later opted for "skeleton" flats so the difference in price was there but the agreements were finally registered on actual prices. For some flats, part amounts were received till then & some of the partners namely Sh. Ashok Maheshwari, Rajendra Jain, Anil Mundra himself & Bhuvanesh Lahoty's names were on the sheet so as to show to prospective buyers that only a few flats were available for sale. The Id. CIT(A) has further held that the A.O. has not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by the assessee outside the books of accounts to match with the figures of difference appearing in the loose sheet. In fact he did not even cross check with the partner Sh. Anil Mundra & others regarding the same to establish any difference in their version given at the time of search. Even in the course

of the search proceedings nothing has been brought on record so as to establish any agreements to sell evidencing any cash or unaccounted consideration passing hands between the buyers and the assessee. The Id. CIT(A) has also held that if the A.O. was convinced that the assessee had suppressed the sale of Rs. 1.85 crores, he should have taxed the profit on the same because if the rate of Rs. 3550/-per square feet was true, then the expenses would also be equally reducible and he has nowhere worked out that there were bogus expenses claimed against the actual sale shown. The A.O. never made out a case u/s 69C against the buyers or referred the same to their respective A.O. if he really wished to take the matter to a logical conclusion. The absence of the above two steps shows that he made the addition causally and without actually going into the depth of the issue and reaching conclusive findings through proper examination of evidences & persons. The 'Skelton' flats' rate is coming to Rs. 3200 to Rs. 3400/- per square feet itself while the 'completed' or 'fully furnished' flat is sold @ 4967/- which difference if not real, would involve an adverse finding from both the service tax department as well as the SRO for tax avoidance if some flats of same measurement are sold at different rates to 'accommodate' cash proceeds. No adverse findings have been gathered by the A.O. from these two departments in respect of the assessee's project. The service

tax ledger account shows flat wise tax paid from 2011 to 2016 even on individual payments credited. Hence, just on the basis of one loose sheet of paper with miscellaneous, unconfirmed 86 uncorroborated notings, to make an addition of Rs. 1,85, 30,430/ - is not fair as this would also mean a suppressed sale of about 25% against the shown project revenue and jack up the profit to 30% (5.43% already shows) which appears to be astronomical as well as impractical on a single project. The addition dwells more in the realm of presumption than real. Thus, it is clear that the A.O.'s examination of the Annexure AS-2 was very casual and not based either on the possible further enquiries or workings or on the appreciation of statements and change in the status of several flats & owners. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition. Considering the totality of facts and circumstances, we found that the Id. CIT(A) has passed a speaking and reasoned order discussing all the details of the case of the assessee, therefore, we do not find any reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same. This ground of the Revenue's appeal is dismissed.

9. Now we take the assessee's cross objection wherein the assessee has challenged the order of the Id. CIT(A) in confirming the addition of Rs. 75,630/-.

10. From perusal of the record, we noticed that there was delay of 6 days in filing the present C.O. for which the assessee has filed application for condonation of delay. In its condonation application, the assessee has stated as under:

- "1. That the Memorandum of Appeal was received in office of the respondent on 17th Dec.2018 and office had placed it before senior partner of the firm Shri Bithal Das Mundra on next day morning.
2. That on same day he contacted our counsel Shri CM Birla for appointment who suggested him to come in his office in first week of next month as he was very busy with the time barring search cases.
3. That on 26th night Shri Bithal Dass Mundra had brain abscess and therefore he was admitted Kota Heart Institute on 27th Dec. morning where he was till 4th January. Even after shift from hospital he was advised for complete bed rest for another 15 days.
4. On return to office on 19th morning he could give Memorandum of Appeal from his lock to other partners which made us late to file C.O.
5. That we could therefore file our C.O. before Hon'ble Bench's office on 22nd January, 2019 i.e. late by 6 days.

6. We with all humilities at our end request for delay condonation of 6 days.

11. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay of 06 days in filing the present C.O..

12. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case of Collector, **Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come on the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not

acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

13. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case, we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 06 days in filing the present C.O. and admit the same for hearing and adjudication.

14. We have considered the rival contentions and carefully perused the material placed on record as well as the order of the Id. CIT(A). As we have discussed in detail in earlier paras of this order that Id. CIT(A) has passed a speaking and reasoned order discussing all the details of the case of the assessee and had given proper relief to the assessee. Therefore, once, we uphold the order of the Id. CIT(A) qua the issue under consideration then there is no need to adjudicate the grounds taken by the assessee in its C.O., accordingly, we dismiss the C.O. filed by the assessee.

15. In the result, both i.e. appeal of the Revenue and C.O. of the assessee are dismissed.

Order pronounced in the open court on 30th March, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/03/2021

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The A.C.I.T., Circle-1, Kota.
2. प्रत्यर्थी / The Respondent- M/s Shri Ganpati Developers, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1348/JP/2018 & CO 08/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar