

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. Nos. 06 & 09/VIZ/2021
(Asst. Years :2017-18 & 2018-19)**

ACIT, Central Circle-1, Vs. Badam Bhogalinga Swamy,
Visakhapatnam D.No. 48-13-18, Bhagavan
Castle, Sri Janakirama Street,
Sri Nagar, Visakhapatnam.

(Appellant) PAN No. ALGPB 9482 Q
(Respondent)

**C.O. Nos. 05 & 08/VIZ/2021
(Arising out of I.T.A. Nos. 06 & 09/VIZ/2021)
(Asst. Years : 2017-18 & 2018-19)**

BadamBhogalinga Swamy, Vs. ACIT, Central Circle-1,
D.No. 48-13-18, Bhagavan Visakhapatnam
Castle, Sri Janakirama
Street, Sri Nagar,
Visakhapatnam.

PAN No. ALGPB 9482 Q (Applicant) (Respondent)

**I.T.A. Nos. 07 & 10/VIZ/2021
(Asst. Years :2017-18 & 2018-19)**

ACIT, Central Circle-1, Vs. BadamVenkata Demullu,
Visakhapatnam D.No. 48-13-18, Bhagavan
Castle, Sri Janakirama Street,
Sri Nagar, Visakhapatnam.

(Appellant) PAN No. ALGPB 9483 R
(Respondent)

*I.T.A. No.06 to 10/Viz/2021 and CO No.05 to 09/Viz/2021
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**C.O.Nos. 06 & 09/VIZ/2021
(Arising out of I.T.A. Nos. 07 & 10/VIZ/2021)
(Asst. Years :2017-18 & 2018-19)**

Badam Venkata Demullu, Vs. ACIT, Central Circle-1,
D.No. 48-13-18, Bhagavan Visakhapatnam
Castle, Sri Janakirama
Street, Sri Nagar,
Visakhapatnam.

PAN No. ALGPB 9483 R
(Applicant)

(Respondent)

**I.T.A. Nos. 08/VIZ/2021
(Asst. Years :2017-18)**

ACIT, Central Circle-1, Vs. Badam Venkateswarlu,
Visakhapatnam D.No. 48-13-18, Bhagavan
Castle, Sri Janakirama Street,
Sri Nagar, Visakhapatnam

(Appellant)

PAN No. AHYPB 5996 M
(Respondent)

**C.O.No. 07/VIZ/2021
(Arising out of I.T.A. Nos. 08/VIZ/2021)
(Asst. Years :2017-18)**

Badam Venkateswarlu, Vs. ACIT, Central Circle-1,
D.No. 48-13-18, Bhagavan Visakhapatnam
Castle, Sri Janakirama
Street, Sri Nagar,
Visakhapatnam

PAN No. AHYPB 5996 M
(Applicant)

(Respondent)

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Assessee by : Shri G.V.N. Hari, Advocate.
Department by : Shri D.K. Sonawal, CIT DR
Date of hearing : 24/03/2021.
Date of pronouncement : 24/05/2021.

ORDER

PER BENCH:

Condonation of Delay

The assessee ought to have filed the appeals in this case on or before 27.12.2020. However, the appeals were filed by the assessee on 08.01.2021. Hon'ble Supreme Court has extended the time limit due to corona pandemic by an order M.A.No.665/2021 in SMW(C) No.3/2020 dt.15.07.2020 for the limitation falling during the period between 15.03.2020 to 14.03.2021 by 90 days from 15.03.2021. Therefore, these appeals are treated as filed within the limitation period and accordingly admitted.

These appeals are filed by the revenue against the order of the Commissioner of Income Tax (Appeals), [CIT(A)]-3, Visakhapatnam in Appeal No.716/2019-20/10516/CIT(A)-3/VSP/2020-21 and No.719/2019-20/10519/CIT(A)-3/VSP/2020-21 dated 09.10.2020. Cross

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objections are filed by the assessee in support of the order of the Ld.CIT(A). Since the facts are identical, these appeals are clubbed, heard together and disposed of in a common order for the sake of convenience as under.

A.Y. 2017-18

2. Facts of the case are extracted from ITA No. 06/VIZ/2021 Shri Badam Bhogalinga Swamy which are applicable to all the cases. Ground No.1 is related to the addition deleted by the Ld.CIT(A) amounting to Rs.10,08,315/- made by the AO relating to on money payment for purchase of plot. During the previous year relevant to the A.Y.2017-18 the assessee and his brother found to have purchased the plots in the names of assessee and the family members as follows:

Sl.No.	Plot No.	Extent (sq.yds)	Sale deed No. and date of registration at SRO, Bhimili	Consideration (Rs.)	Name of vendee
1	108	183.33	230/2017 Dt.01.02.2017	6,42,000	Badam Rajani
2.	109	183.33	231/2017 Dt.01.02.2017	6,42,000	Badam Venkata Demullu
3.	110	183.33	232/2017 Dt.01.02.2017	6,42,000	Badam Venkata Naga Satyaram
4.	111	183.33	233/2017 Dt.01.02.2017	6,42,000	Badam Bhigalinga Swamy

A search u/sec. 132 was conducted on 12/04/2017 and during search proceedings, in the business premises of M/s. Phozo Digital Press

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Pvt. Ltd., two loose sheets bundles were found and seized as Annexure A/PDPPL/VSKP/Office/01&02 which contain certain notings of on money payment in page No. 35 for purchase of the plots. In the loose sheet the sum of Rs.25,65,000/- was mentioned through RTGS and the sum of Rs.41,38,888/- was mentioned as cash payment for 4 plots, each admeasuring 183.33 sq.yds, thus the aggregate sum of Rs.65,99,880/- was shown for four plots. The assessee has purchased one plot bearing plot No.111 admeasuring 183.33 sq.yds registered as sale deed No.233/2017 dated 01.02.2017. In the sale deed, the sale consideration paid was recorded at Rs.6,42,000/-. The AO analyzed the seized material and viewed that the actual consideration for purchase of plot was Rs.9,000/- per sq.yard as against which it was got registered for Rs.3,500/- per sq.yard. In the opinion of the AO, the assessee ought to have paid the consideration of Rs.5,500/- per sq.yard in cash from the unaccounted sources. Accordingly the AO worked out the unaccounted cash consideration at Rs.10,08,315/- @5500/- per sq.yard and proposed to make the addition u/s 69 of the Act. Accordingly, the AO issued the show cause notice and the assessee objected for making the proposed addition stating that the seized paper has nothing to do with the transaction entered in to by the assessee and no cash

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consideration was paid to the vendor for purchase of plot. The assessee further stated that he had purchased the plot from R.K.Megastructures P. Ltd. for a consideration of Rs.6,42,000/- which was duly registered in Sub Registrar Office and no amount was paid over and above the consideration registered in the sale deed. Therefore, requested the AO not to make any addition and requested to accept the sale consideration admitted in the registered sale deed. The AO did not find merit in explanation of the assessee and held that as per the detailed working found in page No.35 of Annexure-A/PDPPL/Vskp/ Office/01 seized from the office of Phozo Digital Press Pvt.Ltd. the sum of Rs. 10,08,315/- was paid in cash, hence, made the addition of Rs.10,08,315/- u/s 69 of the Act.

2.1. Identical addition was made in the case of Badam Venkata Demullu in ITA No.07/VIZ/2017-18.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that loose sheets found during the search do not contain any specific details of on money payment and no corroborative evidence was also brought on record, hence, viewed that on money payment was not proved and accordingly deleted the addition.

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4. Against which the department filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that the seized material found during the course of search in Annexure A/PDPPL/Vskp/Office/01 page 35 clearly shows that the assessee and his family members have purchased 4 plots from R.K.Megastructures Pvt. Ltd. in the names of the assessee and other family members. In the loose sheet there was a mention for payment of a sum of Rs.25,68,000/- through RTGS @3,500/- per sq.yd and cash payment of Rs.40,31,880/- @Rs.5,500/- and hence submitted that the actual sale consideration was Rs.9,000/- per sq.yd. Therefore argued that as per the noting in loose sheet the assessee has paid the sum of Rs.10,08,315/- to the vendor in cash over and above the registered sale consideration, hence the AO has rightly made the addition and the Ld.CIT(A) without appreciating the contents of incriminating material deleted the addition. The Ld.DR argued that the Ld.CIT(A) has erred in deleting the addition, therefore, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the department.

5. Per contra, the Ld.AR relied on the orders of the Ld.CIT(A) and argued that the assessee has not made any payment over and above the sale consideration recorded in the sale deed for purchase of plots. What

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was found during the course of search in PageNo.35 of the said loose sheet was a rough noting but not the actual payment and it does not pertain to this transaction. No corroborative evidence was found for making the cash payment as per the loose sheet and it was nothing but a dumb document. The consideration recorded in the sale deed was correct consideration which was duly registered before the Sub Registrar office. Unless there is a tangible evidence found with regard to payment of consideration over and above the consideration recorded in the sale deed, there is no case for making the addition, hence argued that no interference is called for in the order of the Ld.CIT(A) and the same is to be upheld.

6. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has purchased the plots for a consideration of Rs.6,42,000/- each from R.K.Megastructures P.Ltd. at Dakamarri each admeasuring 183.33 sq.yds. The sale consideration registered in the sale deed was Rs.6,42,000/- for each plot. According to the AO, the assessee has made the payment of Rs.10,08,315/- over and above the sale consideration registered in the sale deed. The AO heavily placed reliance on the loose sheet found during the course of search marked as page No.35 of Annexure-A/PDPPL/Vskp/Office/01, wherein

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certain rough notings were made. It is settled issue that loose sheets does not convey any meaning without having corroborative evidence. In the instant case, though certain notings were made with regard to cash payment, however, no details were mentioned with regard to plot number, payer ,payee and the purpose of payment etc. The assessee has denied having made any payment over and above the sale consideration recorded in the sale deed. Unless there is tangible evidence, merely on the basis of loose sheet which does not have any details do not convey any meaning for making the addition. It is settled issue that the sale consideration recorded in the sale deed needs to be adopted for the purpose of payments made to the vendor as decided by Hon'ble Punjab and Haryana High Court in the case of Paramjit Singh Vs. ITO (185 taxman 273) and the order of the coordinate bench of ITAT, Hyderabad in ITA No.1472/2016 dated 13.07.17. Therefore, we hold that the Ld.CIT(A) has rightly deleted the addition and we uphold the order of the Ld.CIT(A) and the dismiss the ground of the revenue on this issue.

7. Ground No.2 of ITA No.06/VIZ/2021 is related to the addition of Rs.6,04,800/-made u/s 69A of the Act for on money payment which was deleted by the Ld.CIT(A).During the course of search on 12.04.2017 in the

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premises of the assessee Mr.Badam Bhogalinga Swamy certain loose sheets were found marked as Annexure A/BBS/Res/Vsp/01 and page No.39 to 47 of the annexure are copies of the sale deeds for purchase of Plot No.197 and 198 with extent of 48 sq yards each plot, aggregating to 96 sq. yds, in Sai Villa Phase III, Bhogapuram from Surya Developers for a consideration of Rs.1,92,000/-. The incriminating material found in the premises of Phozo Digital Press Pvt.Ltd. in the form of loose sheets marked as Annexure A/PDPPL/Vskp/Office/01 on 12.04.2017 suggest the cash payments made by B.V.Demullu for purchase of the villa in Sai Villa Phase III, Bhogapuram from Surya Developers for an amount of Rs.3,86,000/- dated 25/11/2016. The loose sheet in page No.8 of the above annexure indicated the cash component of Rs. 21,04,000/- and cheque component of Rs. 6,72,000/- for plot No. 184, 185, 186 and 187 consisting of 4 plots aggregating to 336 sq.yds. at the rate of Rs. 8,300/- per sq.yrd. Therefore the AO viewed that the assessee ought to have paid the sum of Rs. 8300/- per sq.yd against the registered sale consideration of Rs.2000/- declared in the Registered sale deed. Hence, the difference amount of Rs.6,04,000/- representing the difference between actual cost and the declared consideration (8300-2000=6300*96) was brought to tax as undisclosed income.

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7.1. Identical additions were made for the A.Y. 2017-18 in the case of Badam Venkata Demullu for an amount of Rs,4,66,000/- and in the case Badam Venkateswarlu for an amount of Rs.30,99,600/-.

8. Against the order of the AO the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the additions holding that there was no evidence found during the course of search or to hold that the assessee has purchased the plot at Rs.8,300/-per sq.yard and registered the same at Rs.2,000/- per sq.yd, and hence, deleted the addition.

9. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal.

10. We have heard both the parties and perused the material placed on record. As rightly observed by the Ld.CIT(A), the AO relied on the loose sheet for assuming the payment of cash consideration over and above the registered amount as per the registered sale deed, however, there was no corroborative evidence or material found during the course of search. The said loose sheet did not give any details with regard to actual payment, the name of purchaser and the vendor. In the case of Badam Venkateswarlu, he has purchased Plot Nos.184 to 189, whereas the loose sheet notings was

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only for 4 plots without the names of purchaser or vendor. Mr.Badam Bhogaling Swamy has purchased the plot Nos. 197 & 198 as per registered sale deeds. Similarly Mr.Badam Venkata Demullu has purchased the plot No. 190. The assessee denied having made the payment over and above the registered sale deed. He explained the notings on loose sheet are rough notings but not the actual payments. No other corroborative evidence was found by the AO to assert that the payment was made over above the consideration recorded on sale deeds. The legal validity of notings on a loose sheet without having the corroborative evidence has come up before the coordinate bench of ITAT, Amritsar in the case of Smt.Harmohinder Kaur Vs. Dy.CIT, Central Circle-II, Jalandhar 124 taxman.com 68 (Amrit-Trib). The coordinate bench of ITAT has considered the decision of Hon'ble Supreme Court in the case of CBI Vs. V.C.Shukla 199 taxman.com 2155 and the decision of common cause (registered society) Vs. Union of India 77 taxman.com 245 and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Praveen Jones ITA No.57/2017 dt.14.07.2017 and held that without the corroborative evidence, to prove the authenticity of diary seized during the course of search, the AO could not make addition in assessee's income

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on the basis of notings in the diary. For the sake of clarity and convenience, we extract para No.13 of the order which reads as under:

“12. The Apex Court in the cases of V.C. Shukla (supra) and Common Cause (A registered Society) (supra) analyzed the position of law with regard to the loose sheets/diary in which some noting has been made by the person other than the persons searched and clearly held that the said document do not have any value in the eyes of law. Further entries in the Diaries, note books and file containing loose sheets paper not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are not relevant and not admissible u/s 34 of the Evidence Act. Further as to value of the entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

13. On the basis of the aforesaid judgments, we are of the view, diary seized during the survey/search operation, without corroboration, have no authenticity and therefore, cannot be relied upon. Even entry recorded in the diary qua amount of sale was not confirmed from the buyers of the property and without confirmation, question of any assumption or belief that the entry belongs to the assessee did not arise and hence entry found in diary without any corroborative evidence, cannot be made basis of addition. The authorities below in the instant case, made the addition only on the basis of surmises, suspicion and guess work. Hence, respectively following the judgments referred above we are unable to sustain the addition made by the Assessing Officer and affirmed by the Ld. CIT(A). Consequently we are inclined to delete the same, resultantly the appeal of the assessee is liable to be allowed.”

Though the receipt was available in the case of Mr. Badam Venkata Demullu for payment of Rs. 3,86,000/-, but the assessee denied having made the payment and the AO did not examine the vendor to bring the evidence to controvert the submission of the assessee. Therefore, the issue is identical to the on money payment of Rs.10,04,315/- discussed in para No.2 of this order and the issue is squarely covered by the decision of

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Hon'ble Punjab and Haryana High Court and the decision of coordinate bench of ITAT, Hyderabad in ITA No.1472/2016 dated 13.07.17. Respectfully following the view taken by the Hon'ble Punjab and Haryana High Court and the coordinate bench of ITAT, Hyderabad, we, hold that in the absence of corroborative evidence to support the payment of on money merely on the basis of some notings on loose papers, the addition made by the AO is unsustainable. Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

11. Ground No.3 and 4 are related to the addition of Rs.60,00,000/- made by the AO u/s 69C of the Act. This is also common issue for all the appeals of Badam Venkata Demullu, BadamVenkateswarlu and Badam Bhogalinga Swamy for the AY.2017-18. The AO found that the assessee have shown the meager amount of drawings of Rs.1,20,000/- per annum. When the assessee was asked to justify the drawings, assessee have justified the drawings with the drawings of spouses which was around Rs.2,40,000/- per year in each individual cases. However, the AO found from the scribbling pad that was seized during the course of search on 12.04.2017 from the residence of B.Venkateswarlu marked as Annexure A/BVS/02, wherein the hand written notings were made from 2014 to 2017

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mentioning 63% from November 2014 to September 2015, 64% from October 2015 to February 2016 and 66% from March 2016 to January 2017. On the basis of hand written notings on the scribbling pad, the AO estimated undisclosed expenditure of Rs.1,79,94,169/-(rounded off to Rs.1,80,00,000/-), that might have been shared between the three families i.e. B.Venkateswarlu, B.Bhogalinga Swamy and B.V.Demullu from the profits and accordingly, proposed the addition u/sec. 69C and issued show cause notice. In response to the notice, the assessee has filed explanation stating that the entire sum mentioned in the scribbling pad was the turnover of the company and was deposited in the bank account and taken in the books of account of the company on various dates and furnished the details of deposits made in various bank accounts of the company and submitted that all the amounts written in the scribbling pad was duly recorded in the books of accounts of the company, M/s Phozo Digital Press (P) Ltd. and hence no addition is called for on account of unexplained expenditure for short drawings u/s 69C of the Act and therefore, requested not to make the addition. However, the AO not being convinced with the explanation of the assessee, made the addition of Rs.60 lakhs in the hands

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of each director as unexplained expenditure u/s 69C of the Act, out of the total sum of Rs.1,80,00,000/-.

11.1. It is pertinent to mention here that on identical facts the AO made the addition of Rs.2,08,80,000/- for the A.Y. 2015-16 and the sum of Rs.2,06,50,076/- for the A.Y.2016-17 in the hands of the Phozo Digital Press (P) Ltd. as unaccounted income representing gross collections, mentioned in the same scribbling pad.

12. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) viewed that the entries made in the scribbling pad seized from the residential premises of B.Venkateswarlu has clearly explained the notings as cash handled by him and also submitted that nowhere, the profit was mentioned and it was never accepted as undisclosed income. The entire sums mentioned in the scribbling pad was duly accounted in the books of accounts, and hence, the Ld.CIT(A) held that the AO is not justified in making the addition, accordingly, deleted the addition.

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13. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal. The Ld.DR supported the order of the AO and the Ld.AR relied on the order of the Ld.CIT(A).

14. We have heard both the parties and perused the material on record. In the instant case the AO made the addition u/s 69C r.w.s 115BBE of the act, therefore, it is necessary to have a look on section 69C which reads as under:

“69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

[Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]”

As provided in section 69C, if the assessee had incurred the expenditure and failed to explain the source, the said expenditure required to be taxed u/s 69C of the Act. In the instant case the AO made the estimated addition of unexplained expenditure without having any evidence to show that the assessee had incurred the expenditure. Though

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search u/s 132 was conducted both in the company and the residences of directors, the department did not unearth any evidence having incurred such huge expenditure by the assesseees. No other evidence was found by the AO evidencing the incurring of the expenditure to the tune of Rs.1,80,00,000/- in the residence of three directors from the unaccounted sources.

14.1. What was found by the AO was the scribbling pad with notings of some receipts and payments for the part periods of F.Y.2015-16 to 2017-18 in the residence of Shri B.Venkateswarlu and the contents were explained by Shri B.V.Demullu as the cash handled by him during the above period and the assessee further stated that the entire receipts were accounted in the books of accounts of the company. On the day of search no statement was recorded on the contents of the scribbling pad and during the course of assessment proceedings one of the directors Shri B.V.Demulu had explained the contents of the diary as gross receipts after deducting the agents commission which was ranging from 33% to 37%. Thus, it was explained that the amounts mentioned in the scribbling pad represent gross receipts and the payments related to the company M/s Phozo Digital Press (P_) Ltd. and same were duly accounted in the books of

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accounts. The assessee also submitted the date wise deposits made in bank accounts. The diary was stated to be maintained for the purpose of information and to explain to other directors. Further, the director explained that the payments represent either advances or the expenses met by Shri Demullu for the purpose of business. It was also revealed that the gross turnover declared by the company M/s Phozo Digital Press Pvt Ltd was more than the turnover noted in the scribbling pad. Though the assessee had explained the contents, the AO made the addition without bringing any evidence to disprove the explanation offered by the assessee due to some mismatch of entries. However, the assessee furnished the complete details of Rs. 1,79,94,169/- which was reproduced in the assessment order. Therefore, it is clear that the assessee had explained the payments with cash flow and the AO did not bring any evidence to show that the assessee have incurred the expenditure of Rs. 1,80,00,000/-. The AO also acknowledged the cash receipts were related to the company M/s Phozo Digital Press (P) Ltd. in page No.31 and Para No.30 of the assessment order.

14.2. The legal validity of notings made in the loose sheet was considered by the coordinate bench of ITAT, Amritsar (Supra) and held that without

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the corroborative evidence, to prove the authenticity of diary seized during the course of search, the AO could not make addition in assessee's income on the basis of notings in the diary.

14.3. On similar issue in the case of Commissioner of Income-tax. v. C.J. Shah & Co., [2001] 117 TAXMAN 577 (BOM.), Hon'ble Bombay High court held that having found no material to show turnover during block period, on the basis of loose sheets which indicated figures of only incoming and outgoing cash transactions, addition made was arbitrary. For the sake of clarity we, extract relevant paragraph of the order of Hon'ble Bombay High court which reads as under:

"3. It is well-settled that in cases where material is detected after search and seizure operations are carried out, the Assessing Officer is required to determine the undisclosed income. In such cases additions are generally based on estimates. In matters of estimation some amount of latitude is required to be shown to the Assessing Officer, particularly when relevant documents are not forthcoming. However, it does not mean that the Assessing Officer can arrive at any figure without any basis by adopting an arbitrary method of calculation. In the present matter, A3, A4 and A6 nowhere records the turnover of the assessee as found by the Tribunal and yet on the wrong basis of the incoming and outgoing cash transactions, the Assessing Officer has arrived at the turnover. Moreover, the peak investment was Rs. 40,14,806 for three months. However, there is no material seized to justify any figure to be included for a period earlier to the said period of three months. In the circumstances, the Tribunal has recorded a finding of fact and has held that the addition of Rs. 3.40 crores was totally unjustified. The entire finding of the Tribunal is based on the facts. No substantial question of law arises. Hence, the appeal is dismissed."

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14.4. On similar facts of the assessee's case the coordinate bench of ITAT, Pune in *S.P. Goyal v. Deputy Commissioner of Income-tax*[2002] 82 ITD 85 (Mumbai) (TM)/[2002] 77 TTJ 1 (Mumbai) (T) on reference to third member, third member agreed with the view of the Accountant Member and held that loose sheet itself has no intrinsic value unless it is supported by the corroborative evidence. For the sake of clarity we, extract the view of the Hon'ble third member which reads as under:

"15. Lastly, the Hon'ble Vice-President (Judicial Member) also cited the decision of the Hon'ble Supreme Court in the case of Chuharmal (supra) for the proposition that when a person is found in possession of anything, the onus of proving that he was not its owner was on that person. The above ratio will not have application to the facts of the present case. In the case of Chuharmal (supra), the possession was in regard to valuable articles in the form of wrist watches of foreign make. The ownership of such valuable articles have to be definitely proved and if the person in whose possession the said valuable article was found claimed that the same did not belong to him, the onus of proving that he was not its owner was on that person. In the present case here it is a mere loose sheet in which the assessee confirmed that the entry was in his own handwriting. The loose paper in itself has got no intrinsic value. It does not represent negotiable instrument which can be exchanged for a sum of Rs. 60 lacs. Therefore, the above decision does not have direct application to the facts of the present case. When it is a mere entry on a loose sheet of paper and if the assessee claims that it was only a planning, not supported by actual cash, then there has to be circumstantial evidences to support that this entry really represent cash of Rs. 60 lacs. There is no such evidence found by the revenue in the form of extra cash, jewellery or investment outside the books. In such a case, the explanation offered by the assessee cannot be rejected. In that view of the matter, I concur with the view taken by the learned Accountant Member."

14.5. Hon'ble ITAT, Pune Bench in the case of *Chandra Mohan Mehta Vs. ACIT* (1999) 71 ITD 245 held that loose papers were maintained and kept

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by the assessee for private knowledge and information, but not meant for disclosing to the department. If the statement of the assessee has to be rejected in toto, then no addition would be made on the basis of loose papers since those loose papers would be dumb papers. If the statement of the assessee was to be accepted in toto, then, the contents of the statements were to be accepted and borrowings mentioned in the loose papers has to be accepted as genuine. For the sake of clarity, we extract relevant part of the order of the Tribunal which reads as under:

“9. In view of the above, it is held that the entire statement of the assessee has to be accepted. If that is so, no addition can be sustained on the basis of the materials mentioned above. The loose papers were maintained and kept by the assessee for his private knowledge and information and not meant for disclosing to the Department. If the statement of the assessee is to be rejected in toto, then no addition can be made on the basis of loose papers since those would be dumb papers as discussed in the earlier part of our order. If the statement of the assessee is accepted in toto, then contents of the statement are to be accepted and the borrowings mentioned in these loose papers have to be accepted as genuine. In either case, no addition is called for. No doubt, the presumption to the correctness of the documents can be rebutted by the Department, but the Revenue has not been able to bring any material on the record for rebuttal. Therefore, we are of considered view that no addition can be sustained on the basis of these materials”

In the case of the assessee no other evidence was found indicating incurring of expenditure estimated by the AO. The assessee has explained the contents of the diary as cash inflow and out flow of M/s Phozo Digital Press (P) Ltd. which was not controverted by the AO with the tangible

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evidence. In fact, the AO has acknowledged in assessment order that the cash inflows are related to the company in para No. 30 of the order. Therefore, if the contents of the diary and the explanation of the assessee considered together, no addition is warranted in this case.

15. In view of the foregoing discussion, we hold that there is no case for making the addition u/s 69C on the basis of the notings made in scribbling pad in the hands of the assessee and hence, we, uphold the order of the Ld.CIT(A) and dismiss the appeals of the revenue.

16. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the Revenue appeals are dismissed the cross objections of the assessee becomes infructuous hence dismissed.

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17. Ground No.1 and 2 are related to the addition of Rs.37,00,000/- made u/s 69A of the Act. During the course of search conducted u/s 132 the amount of Rs.37,00,000/- was seized from the residence on 12.04.2017. When the assessee was asked to explain the source of cash, vide letter dated 12.12.2019, the assessee explained that the cash found in the residence belonged to the company and it was kept with him for safe

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custody. The assessee also explained that it was the practice of the company to keep the cash with the directors, since, keeping huge cash balances with a single person or in the premises of the company is risky. The assessee further requested for giving telescopic benefit of the cash found, against the undisclosed income declared in hands of the company. The AO found the explanation of the assessee with regard to request for telescopic benefit is unacceptable, since, the cash seized was consisting of new notes of Rs.2,000/- and Rs.500/- released after demonetization i.e. on 08.11.2016 and there were no withdrawals from his bank account to show that the cash found was from the disclosed sources. Therefore, the AO rejected the request for giving telescopic benefit and made the addition u/s 69A r.w.s.115BBE of the Act.

18. Against the order of the AO, the assessee went on appeal before the CIT(A) and reiterated the arguments made before the AO. The Ld.CIT(A) observed that the assessee has admitted the additional income of Rs.1,33,88,439/- for the earlier year i.e. 2017-18 in the hands of the company, and the assessee is permitted to use the said sum for any other purposes. During the course of search no evidence was found by the AO evidencing the utilization of additional income admitted by the company

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for any other purpose and therefore viewed that there is no reason to disbelieve the contention of the assessee that the cash found during the course of search was belonged to the company. Further, the Ld.CIT(A) also viewed that in the absence of any evidence to show that the money was utilized for any other purpose, there is no justification for rejecting the assessee's request of telescopic benefit. The Ld.CIT(A) further observed that that suspicion of the AO with regard to availability of new currency is baseless since, the search was conducted after the lapse of more than 4 months of demonetization and the assessee was left with sufficient time to convert the old currency into new currency and hence viewed that it is unjustified to reject the telescopic benefit as requested by the assessee. Accordingly deleted the addition of Rs.Rs.37,00,000/- and allowed the appeal of the assessee.

19. Against the order of the Ld.CIT(A), the department has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR submitted that the assessee failed to demonstrate that the cash found was belonged to the company and further submitted that the assessee also failed to explain the source of the cash found and seized. Therefore, argued that the Ld.CIT(A) had erred in accepting the contention of the assessee that the money

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belonged to the company, M/s.Phozo Digital Pvt. Ltd. and blatantly erred in deleting the addition. Hence, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the revenue.

20. Per contra, the Ld.AR submitted that the assessee has admitted the additional income of Rs.1,23,88,439/- for the earlier year in the hands of the company and the cash found was belonged to the company and hence, requested for telescopic benefit. The Ld.AR further argued that the residential premises of all the directors and the business premises of the company were searched and no evidence was found during the course of search evidencing any expenditure for which the source was not explained and therefore submitted that it is unfair to reject the telescopic benefit requested by the assessee, hence, argued that the Ld.CIT(A) has rightly deleted the addition, and no interference is called for in the order of the Ld.CIT(A).

21. We have heard both the parties, perused the material placed on record. There is no dispute that the assessee has admitted the additional income of Rs.1,33,88,439/- for the A.Y.2017-18 and the assessee stated that the cash found during the course of search was belonged to the company

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M/s.Phozo Digital Pvt. Ltd. and it was the practice to keep cash with the directors of the company in their residences. Since, search u/s 132 was conducted in the residence and the business premises and no evidence was found evidencing application of additional income admitted by the assessee, either in the hands of the company or in the hands of the directors, we do not find any reason to reject the telescopic benefit requested by the assessee. Hence, we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Appeal of the revenue on this ground is dismissed.

22. Ground No.3 to 5 are related to the addition of unexplained jewellery u/s 69C of the Act. During the course of search u/s 132 in the residence of the assessee, gold jewellery weighing 1870 gms., Gold biscuits weighing 1400 gms was found, out of which, gold biscuits weighing 1400 gms. was seized by the department. When the assessee was asked to explain the source of gold jewellery, the assessee explained that the gold jewellery is belonging to his wife and family members, which was received as streedhan from the parents as well as gifts from the relatives in the past. With regard balance gold bullion, jewellery, the assessee explained that the same is related to the company, which was kept in the safe custody. Since,

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no books of accounts were maintained or no entries were made in the books of accounts of the company to show that the gold jewellery was belonged to the company, the AO viewed that the entire Bullion, gold jewellery found in the residence of the assessee required to be treated as undisclosed income u/s 69C r.w.s. 115 BBE of the Act and accordingly made the addition of Rs.56,45,783/-. The details of the unexplained gold jewellery brought to tax u/s 69C was furnished in para no.9.2 of the assessment order as under :

Description	Gold bars weight in grams	Gold jewellery weight in grams
Gold bars (biscuits) found	1400	1187
Unexplained money assessed in A.Y. 2012-13	400	142.808
Unexplained money assessed in A.Y. 2016-17	1000	1044.192
Unexplained money for the current year	29,10,000	27,35,783
Value of gold biscuits at Rs. 2,910/- per gram and gold jewellery at Rs. 2,620/- per gram adopted by approved valuer		

23. Against the order of the AO, the assessee went on appeal before the CIT(A) and requested for allowing the credit on account of streedhan and gifts as per CBDT circular and allow the telescopic benefit against the additional income declared in the hands of the company. The Ld.CIT(A), placing reliance on the order of this Tribunal in the case of Suresh Kumar

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Jain in ITA No.585/Viz/2019 to 587/Viz/2019 dated 11.12.2019 and the Board Circular No.1916, allowed the gold jewellery weighing 1044.192 gms as streedhan and gifts. With regard to balance addition of Rs.29,10,000/-, the assessee requested for telescopic benefit from the additional income declared by the assessee in the hands of the company. The Ld.CIT(A) held that in the absence of any evidence to show that the undisclosed income declared by the assessee in the hands of the company was utilized for any other purpose, there is no justification for rejecting the assessee's claim for telescopic benefit, accordingly allowed the appeal of the assessee and deleted the addition.

24. Against which, the revenue has filed appeal before this Tribunal. During the appeal hearing, the Ld.DR argued that Circular No.1916 is only for restricting the seizure of the gold and jewellery at the time of search and the same is not applicable for making the assessment. Though there is a circular issued by CBDT in Circular No.1916, it is binding on the department to allow the credit of the jewellery to the extent of 500 gms. per married female and 250 gms. per unmarried female member and 100 gms. per male member of the family for seizure but not for the assessment, the AO is not barred from enquiring the sources of acquiring the jewellery.

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Since the assessee failed to explain the source, the Id.DR argued that the AO has rightly made the addition and the Ld.CIT(A) is not right in taking shelter under the Board Circular to delete the addition, hence, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the revenue.

24.1. With regard to balance gold of 1400 gms. bullion and the representing addition of Rs.29,10,000/-, the Ld.DR submitted that there was no evidence to show that the gold bars were related to the company and the sourced from the company's funds. Therefore, argued that in the absence of any evidence to show that the gold bars was sourced from the funds of the company, the Ld.CIT(A) erroneously deleted the addition, hence, requested to set aside the order of the Ld.CIT(A) and allow the appeal of the revenue.

25. On the other hand, the Ld.AR relied on the orders of the Ld.CIT(A).

26. We have heard both the parties and perused the material placed on record. In the instant case, during the course of search, gold jewellery weighing 1400 gms. was found by the department. During the course of search, the investigation wing considered not to seize the gold jewellery as per CBDT Instruction 1916 though the explanation offered by the assessee

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was said to be unsatisfactory, however, the AO brought the same to tax. From the facts of the case it is revealed that the assessee explained the source of jewellery as streedhan of two married family members and unmarried female members as well as gifts received on various occasions. It is also customary to receive gifts by female members on various occasions and functions related to the female child, more so in the states of Andhra Pradesh and Telangana. Thus, the source of jewelry to the extent of minimum threshold as per Board Circular No.1916 stands explained by the assessee. Therefore, we hold that the Ld.CIT(A) rightly deleted the addition placing reliance on Board circular and the decision of this Tribunal in the case of Suresh Kumar Jain in ITA No.585/Viz/2019 to 587/Viz/2019 dated 11.12.2019 and hence, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

26.1. The next issue is with regard to the addition of Rs.29,10,000/- on account of gold bars. The assessee explained during the course of search that gold bars were related to the company, kept in assessee's house. The AO made the addition for want of evidence in the form of entries in the books of accounts. Since the gold bars were purchased from the undisclosed income declared in the hands of the company, naturally no

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evidence would be available, since the same was acquired out of unexplained sources. Therefore expecting the evidence for the application of undisclosed income is unreasonable and ambitious. The assessee has requested for telescopic benefit from the additional income declared in the hands of the company in earlier assessment years and the same is justified. Therefore, we hold that the Ld.CIT(A) has rightly allowed the telescopic benefit and no interference is called for in the order of the Ld.CIT(A). Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

27. Ground No.6 is general in nature which does not require specific adjudication.

28. The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the Revenue's appeal is dismissed the assessee's cross objections became infructuous, hence, dismissed.

I.T.A. No10/VIZ/2021 (B.Venkata Demullu)

29. Ground No.1 and 2 is related to the addition of Rs.33,00,000/- cash found seized from the residence of the assessee which was added u/s 69A of the Act. The assessee explained that the cash belonged to the company

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and therefore requested to allow the telescopic benefit from the incomes declared in the hands of the assessee and the additional income declared in the hands of the company. The AO rejected the contentions of the assessee and made the addition u/s 69A.

30. The Ld.CIT(A) deleted the addition allowing telescopic benefit to the assessee.

31. We have heard both the parties, perused the material placed on record. In this case, the assessee has declared the income for the A.Y.2016-17, 2017-18 amounting to Rs.3,50,000/- and Rs.18,30,000/- respectively aggregating to Rs.21,80,000/-. Therefore, the funds available with the assessee to the extent of income declared. The assessee also admitted the additional income in the hands of the company in the earlier year to the extent of Rs. Rs.1,33,88,439/- consequent to search and the same would be sufficient to meet the cash found during the course of search. As discussed in the order of the Badam Bhogalinga Swamy, there is no evidence found during the course of search relating to the unexplained expenditure made out of undisclosed income admitted by the assessee. Therefore, following the same reasoning in the case of Bhogalinga Swamy

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in this order, we hold that the Ld.CIT(A) rightly allowed telescopic benefit and deleted the addition and hence, we do not find any reason to interfere with the order of the Ld.CIT(A). Accordingly, ground No.1 and 2 of the revenue are dismissed.

32. Ground No. 3 to 5 are related to the addition of Rs.44,60,590/- related to gold jewellery. In this case also, the AO found gold jewellery weighing 1702 gms out of 633 gms were seized. The AO called for the explanation of the assessee and the assessee explained that the gold jewellery was belonged to his wife and other family members, which was received by his wife as streedhan as well as gifts on past occasions. Not being convinced with the explanation of the assessee, the AO made the addition of the value of jewellery amounting to Rs.44,60,550/- u/s 69A of the Act. On appeal before the CIT(A), the Ld.CIT(A) allowed the gold jewellery of 1100 gms as per Board Circular No.1916 and following the order of this Tribunal cited supra in the case of Suresh Kumar Jain(Supra) and the balance amount of Rs.15,17,000/- was given telescopic benefit out of undisclosed income admitted by the assessee in the hands of the company.

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33. Against which the department has come on appeal before us.
34. The issue is identical to the facts in the case of Badam Bhogalinga Swamy for the A.Y.2018-19 discussed in this order in earlier paragraphs. Therefore the issue is squarely covered and hence we, do not find any error in the order of the Ld.CIT(A) and dismiss the appeal of the Revenue.
35. The appeal of the revenue on this ground is dismissed.
36. Ground No. 6 is general in nature which does not require specific adjudication.
37. In the result, appeals filed by the Revenue and the cross objections filed by the assesseees are dismissed.

Order pronounced in the open court on this 24th day of May, 2021.

Sd/-
(N.K. CHOUDHRY)
Judicial Member

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

Dated: 24th May, 2021.

L.Rama, SPS

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Copy to:

1. *The Assessee -*

- a) *Badam Bhogalinga Swamy*
- b) *Badam Venkata Demullu*
- c) *BadamVenkateswarlu*

*All are residents of D.No. 48-13-18, Bhagavan Castle,
Sri Janakirama Street, Sri Nagar, Visakhapatnam*

- 2. *The Revenue - ACIT, Central Circle-1,
Visakhapatnam.*
- 3. *The Pr.CIT (Central), Visakhapatnam.*
- 4. *The CIT(A)-3, Visakhapatnam.*
- 5. *The D.R., Visakhapatnam.*
- 6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Visakhapatnam.