

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER  
Virtual hearing**

**ITA No.218/Ind/2020  
Assessment Year: 2014-15**

DCIT, Central-II, Bhopal ... Appellant  
Vs.  
M/s. Signature Colonisers, Bhopal  
PAN – ABXFS 0002 J ... Respondent

**ITA No.219/Ind/2020  
Assessment Year: 2014-15**

DCIT, Central-II, Bhopal ... Appellant  
Vs.  
M/s. Signature Builders & Colonisers, Bhopal  
PAN – ACCFS 9498 Q ... Respondent

Revenue by	Shri Rajib Jain, CIT-DR
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	13.10.2021
Date of Pronouncement	21.12.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeals filed at the instance of the Revenue are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-3, Bhopal [in short Ld. CIT(A)] dated 05.3.2020 & 11.3.2020, respectively, which are arising out of the assessment orders dated 18.3.2016 & 18.3.2016, respectively, framed by ACIT, Central-II, Bhopal.

**M/s. Signature Colonisers, Bhopal - A.Y. 2014-15**

In ITA No.218/Ind/2020 for the assessment year 2014-15, the Revenue has raised the following grounds of appeal:

- “1 On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.3,40,00,000/- made by the Assessing Officer on account of unexplained investment u/s 69 of the I.T. Act.
2. On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.25,00,000/- made by the Assessing Officer on account of unexplained unsecured loan.”

2. On ground no.1, the facts as culled out from the records of Revenue Authorities are that during the course of search at office premises of the Signature Group at Chuna Bhatti Square, Pages 43-68 of LPS-72 were seized. The AO during the course of assessment proceedings found that these papers are unsigned

agreements/MoUs for purchase of lands at village Inayatpur and Kankariya by M/s Signature Colonisers from M/s Simara Realty and others. These papers shows payment of Rs 90,00,000/- and Rs 1,50,00,000/- by the assessee to M/s Simran Reality and others. Therefore, the AO vide questionnaire dated 12/01/2016 required the assessee to explain the impunged MOU/agreements. The assessee filed its reply and submitted that the impunged agreements were draft agreements which were not executed due to non-agreement between the parties on rates, time of payment etc. and draft agreement prepared only mentions the proposed advance payment and that any mention of such advance payment does not signify that payment was made and/or the agreement was executed. All the MOUs are unsigned by either of the party or by witness. The MOUs are not notarized or registered, therefore, lacks in legal sanctity. Thus, the only inference which can be drawn from the above facts is that the said MOU never materialized. The assessee also submitted that summons may kindly be issued to the persons mentioned in the seized loose papers to get confirmation of the facts of the case narrated in the reply and the assessee is prepared to bear all costs that may be required by law in this regards. However, the

Assessing Officer did not find the same acceptable for the following reasons

(i) *The copies of these agreements between the assessee and M/s Simran Reality and its partners have been found and seized from the office premises of the assessee. Therefore it pertains to the assessee.*

(ii) *Page No. 43 to 65 of LPS-72, are the following agreements which show the following details:-*

<b>Page No.</b>	<b>Date of draft agreement</b>	<b>Total land to be purchased</b>	<b>Rate per acre</b>	<b>Payments made by the assessee</b>
43 to 46	11/12/2013	12.95 Acres	1.60 Crores	Rs 60 lakhs by cheque
48 to 52	18/11/2012(as per cash paid)	20.00 Acres	1.60 Crores	Rs. 50 Lakhs paid on 18/11/2012 by the assessee in cash Rs. 1 Crore to be paid before 30/11/2013
53 to 54	31/11/2013	-	-	Cash receipts of Rs. 90 Lakhs paid by assessee on 31/11/2013
55 to 58	11/12/2013	6.69 Acres	1.60 Crores	Rs. 1 Crore paid on 27/11/2013 by the assessee in cash
61 to 65	-	13.07 Acres	1.60 Crores	Rs. 1.50 Crores paid in cash by the assessee

*Thus, from the above details it is seen that the agreements made are in respect of different area to be purchased but the rate per acre mentioned in all the agreements is same i.e. Rs. 1.60 Crores per acre. It is seen that these are four different agreements made by assessee with M/s Simran Realty and its partners. The cash payments as per the agreements are made on different dates. The cheque payments mentioned in the agreements are stated to be recorded in the books of accounts, however, as regard the cash payments, the*

*assessee has taken the plea that these are unsigned agreements and not executed. This contention of the assessee is not acceptable*

*(iii) The assessee's main contention in this regard is that the agreements are unsigned and are not finalized and the amounts paid by cheques as mentioned in the agreements are received back by the assessee on account of cancellation of the said transaction. This submission is not relevant to the query raised as the query is raised in respect of cash payments made by the assessee to M/s Simran Reality and its partners as per the agreements. Once the assessee has agreed that the cheque payments mentioned in the agreement, which is also unsigned, are recorded in its books of accounts, it is a corroboratory evidence which proves beyond doubt that the cash payments mentioned in the agreements are also actually paid by the assessee, however the same are not recorded in the books of account of the assessee.*

*(iv) Since the next payment of Rs 1,00,00,000/- as per agreement seized at page no. 48 to 52 of LPS-72, is due on 30/11/2013 i.e. after 18/11/2012, the date of first payment of Rs. 50 Lacs and also before the dates of cheque payments i.e. 30/11/2013 and 02/12/2013, it is clear that the payment of Rs 1,00,00,000/- has also been made by the assessee to M/s Simran Realty and its partners on 30/11/2013. This payment is also not recorded in the books of account of the assessee.*

*(v) The agreement seized as per page no. 61 to 65 of LPS-72 shows the cash payment of Rs. 1.50 Crores by the assessee as on date of agreement. The said agreement is undated. However, since all the other agreements are made in financial year 2013-14, and the parties and land under consideration is*

*from same village, the period of this transaction is also considered as financial year 2013-14.*

*(vi) The information with respect to transactions made with the assessee has been called for from the relevant persons i.e. M/s Simran Realty, its partners and other persons. In this regard, M/s Simran Realty has filed the written submission stating that they have received cheque payment of Rs. 60 Lacs only from the assessee. This submission is not acceptable since the agreements clearly shows receipts of cash amounts as discussed above. When the cheque receipts are admitted by M/s Simran Realty, the cash receipts as per the agreements are also treated to be received by it.*

3. Being aggrieved, the assessee approached the ld. CIT(A) and ld. CIT(A) having gone through the material, submissions and relevant judicial pronouncements deleted the addition.

4. Being aggrieved, the Revenue is in appeal before us. Before us, the ld. CIT-DR relied upon the order of the Assessing Officer whereas the learned Counsel for the assessee relied upon the order of the ld. CIT(A).

5. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that in reply to the Assessing Officer's questionnaire dated

12/01/2016 in respect of the impunged MOU/agreements, the assessee had submitted as under:-

1. *These are draft unsigned agreement for purchase of land at village Inayatpura by the assessee Signature Colonisers and Simara Reality.*
2. *LPS 72 Page 43-46: This is an unsigned draft of an agreement between Simran Reality & the assessee Signature Colonisers in which date of agreement is mentioned as 11.12.2013. Prior to the making of the draft (dated 11.12.2013), the assessee had given an payment of Rs. 60 lacs on 30.11.2013 & 02.12.2013. However while finalising the terms and conditions of the transaction no reconciliation could be made between the assessee and the seller regarding the rate, time ,mode of payment and other terms & conditions and hence the parties agreed to cancel the proposed deal.*
3. *Accordingly the advance payment made of Rs. 60 lacs was received back by the assessee during July-Oct 2014 the details of which are annexed herewith.*
4. *LPS 72 Page 48-52: is a second set of draft agreement which is not only unsigned but it also does not contain the name of the assessee or any of its related concerns in any capacity. It may also be mentioned that the assessee has never purchased the land mentioned in the said loose papers.*
5. *LPS 72 Page 53-54: is an unsigned and undated draft receipt which in absence of any signatures of the recipient is meaningless.*
6. *LPS 72 Page 55-58: is n draft agreement between Jawahar Kotwani & others with Signature Colonisers which has not been executed which is evident from the fact that they are unsigned.*

7. LPS 72 Page 59-65: is an draft agreement for purchase of land comprised in loose papers earlier mentioned ( 3.424 acre in LPS 72 page 51, 0.59 & 0.18 acre in LPS 72Page 50) wherein the names of the sellers have been changed from the earlier draft. This fact categorically establishes that the papers under reference are draft agreements.

*In case your good self is not satisfied with the explanation of the assessee it is requested that summons may kindly be issued to the persons mentioned in the seized loose papers to get confirmation of the facts of the case. The assessee is prepared to bear all costs that may be required by law in this regards.*

6. We find that the Id. CIT(A) discussed each and every contentions raised by the Assessing Officer which read as under:

***“Vi Once the assessee has agreed that the cheque payment mentioned in the agreement which is also unsigned are recorded in the books it is corroboratory evidence which proves beyond doubt that the cash payment mentioned in the agreement are also made.***

The appellant has strongly contended and stated that all the draft agreements are independent agreements having been prepared on separate dates for separate lands having separate owners, thus attributing any similarity in the agreements is not justified. The payments by the cheques were made on 30.11.2013 and 02.12.2013, however, the draft agreements were prepared on 11.12.2013. Thus the cheques issued were paid prior to the date of proposed agreement and were not in pursuance of the agreement. The appellant further stated that no agreement could be reached on various terms and condition and accordingly the advance paid was refunded. The fact has also been confirmed by M/s Simara Realty before the AO.

***Vii The next payment of Rs. 1 Crore as per agreement is due on 30.11.2013 and it is clear that it has also been made by the assessee.***

The impugned payment represents future payment. Neither during the course of search nor during the course of post search investigation no evidence or material indicating any unrecorded cash payment made by the appellant to these parties. Thus there was no reason to believe that future payments mentioned in an unexecuted agreement specifically denied by both the parties to the agreement were actually made.

***Viii Cash payment of Rs. 1.50 crore is appearing in the unsigned and undated agreement, however since all other agreements are made in F.Y 2013-14 and the parties under consideration being same and the land being in the same village, the period of this transaction is also considered as F.Y 2013-14.***

The AO presumed that an undated, unsigned agreement having no mention of the name of the appellant at any place in the agreement was executed by the appellant without any material to justify such presumption. Any addition can be made in a specific assessment year when the same has been actually taken into place in the same assessment year. In the instant case, the AO has presumed that since the other MOU were executed in AY 2014-15, the MOU under consideration is also executed in AY 2014-15. Clearly, addition has been made by AO on presumption and assumption basis.

***Ix M/s Simran Reality have made written submissions stating that they have received cheque payment of Rs. 60 lac only from the assessee. This submission is not acceptable since the agreement clearly shows receipt of cash amount.***

The appellant has contended that the agreements were never executed which are established by the fact that

they are unsigned and is also confirmed by both the parties. The cheque issued as advance were issued prior to the preparation of Draft agreement and were subsequently refunded through banking channels as no consensus could be reached regarding the rates and other terms and conditions. The cheques were issued prior to the preparation of draft agreement and the advance amount has been returned by the beneficiary party. The agreement never materialized, therefore, the terms and condition mentioned therein cannot be used against the appellant in absence of any independent cogent evidence.”

7. We find that the Ld. CIT(A) further noted that MOU is relating to “MOU between assessee and Simara Reality” and M/s Simara Relity during the course of assessment proceedings before the AO had stated that the MOUs are draft MOUs and never materialised due to dispute on terms and condition of the MOUs and the advance amount received through cheques were returned to the assessee. Further, the Assessing Officer failed to bring on record any cogent evidence, creating direct nexus of payment of Rs. 3,40,00,000/- by the assessee. Thus, ld. CIT(A) noted that in absence of any cogent evidence having direct nexus with the impunged transaction, the said impunged paper i.e. page nos. 43 to 68 of LPS-72 cannot be used against the assessee. Thereafter, the ld. CIT(A) relying upon the relevant judicial pronouncements discussed the legal admissibility of the ‘dumb document’ holding

that the a dumb document cannot be used as an evidence to draw an adverse inference against the assessee. We find that ultimately, the ld. CIT(A) held as under: -

*“The AO has made allegation against the assessee that it has done cash expenditure of **Rs. 50,00,000/- in AY 2013-14 and Rs. 3,40,00,000/- in AY 2014-15**. In absence of any admission, by any of the partner or either by any of the person/firm/company whose names are mentioned on the pages of the MOUs, addition cannot be made on basis of sheer imagination. It is settled legal position that onus of proof is on the person who makes any allegation and not on the person who has to defend. As per legal maxim **“affairmanti non neganti incumbit probatio”** means burden of proof lies upon him who affirms and not upon him who denies. Similarly as per doctrine of common law **“incumbit probatio qui digit non qui negat”** i.e. burden lies upon one who alleges and not upon one who deny the existence of the fact. The AO has failed to discharge his onus of proof especially when addition has been made under “deeming fiction”. In view of this lacune on the part of AO, impunged addition is legally not sustainable. Nevertheless, Ld. AR of the assessee has strongly opposed to the applicability of provision of **Section 69 of the Act** because there was not even an iota of evidence to establish that investment was not recorded in the books of account. Onus of proof is on the department to prove that appellant made some unaccounted investment. It is undisputed fact that the AO has failed to discharge his onus and simply on guess work, presumption and suspicion, addition in this regard has been made. I agree with the contention of the appellant that the A.O. is not justified in making the addition simply on assumption and presumption basis. It would be pertinent to refer to the decision of Hon’ble Apex Court in the case of **Umacharan Saha & Bros Co. v/s CIT 37 ITR 21 (SC)** wherein it was held that suspicion, however, strong cannot take place of proof. It would be most pertinent to refer to the decision of Hon’ble Supreme court in the case of **K P Varghese v/s ITO (1981) 131 ITR 597(SC)** wherein it was held that assessee must be shown to have received more than what is disclosed by him as consideration. Burden of proof is on the department. Here the ratio of the above cited case is squarely applicable to the facts of this case, the AO is required to bring some tangible and positive material on record to prove that assessee has paid amount not recorded in books of accounts. Hon’ble Supreme Court in the case of **Dhakeshwari Cotton Mills Ltd v/s CIT (1954) 26 ITR 775***

*(SC) has held that although strict rules of evidence Act do not apply to income tax proceedings, assessment cannot be made on the basis of imagination and guess work. Similar views have been expressed by Apex court in the case of **Dhiraj Lal Girdharilal v/s CIT (1954) 26 ITR 736 (SC)**. This is an undisputed fact that neither any incriminating material was found or seized during search proceedings nor the beneficiary of the amount has ever admitted about receipt of the said amount, as per MOU, from the appellant firm. In absence of any corroborative evidence to prove that there was any exchange of money by CASH/Cheque/Kind, AO has no locus to assume that appellant has made expenditure of Rs. 50,00,000/- in AY 2013-14 and Rs. 3,40,00,000/- in AY 2014-15 in cash.*

**4.4.7** *In view of the above discussion, material evidences on record and case laws cited, the impunged MOU or say dumb document was undated, unsigned and not notarized/registered. The dumb document should be a speaking one reflecting each and every transaction completely, which was not in the case of appellant. The AO did not find any major discrepancies in books of accounts and therefore, books of accounts were not rejected by the AO. My findings on the issue under consideration are based on the various conclusions drawn by me which have been discussed in the above paras. Therefore, the AO was not justified in making addition of Rs. 50,00,000/- in AY 2013-14 and Rs. 3,40,00,000/- in AY 2014-15 as unexplained expenditure. Thus, the addition made by the AO amounting to **Rs. 50,00,000/- in AY 2013-14 and Rs. 3,40,00,000/- in AY 2014-15** are **Deleted**. Therefore, appeal on this ground is **Allowed.**”*

8. We find that before us, the ld. CIT-DR except relying upon the order of the Assessing Officer could not bring any positive material to controvert the findings of the ld. CIT(A). Having gone through the material available on record and rival submissions, we find that the assessee is a partnership firm and filing the returns regularly. The books of accounts are audited and the TAR is filed. During the course of search action at the premises of Signature Group, some unsigned draft MOU/Agreements

between Simara Reality and the assessee were found which were named as LPS 72 page 43-68. During the course of assessment proceedings, the assessee had submitted that these were draft agreements which were not executed due to non agreement between the parties on rates, time of payment etc. It was also submitted that any draft agreement prepared mentions the proposed advance payment and any mention of such advance payment does not signify that payment was made and/or the agreement was executed. We find that the Ld. AO had referred various loose papers based on which the addition under consideration has been made. However, learned Counsel for the assessee submitted that all the papers were unsigned and ld. CIT(A) held allowed the assessee's appeals holding that the unsigned agreements never materialised and therefore, the terms and conditions therein cannot be used against the assessee in absence any independent cogent evidence. We find that neither any of the persons has ever stated that such transaction actually took place. The entire addition has been made on sheer presumption and assumption. The A.O. failed to establish whether the transaction has actually materialised. M/s Simran Reality has stated that the MOU's are draft and did not

materialise. The A.O. has failed to bring on record any cogent evidence or direct access of payment by the assessee. Thus, we are of the view that the “dumb document” cannot be used as an evidence to draw an adverse inference against the assessee. Our view is supported by the following judicial pronouncements:

***ACIT Vs. Satyapal Wassan (2007) 295 ITR (AT) 352 (Jabalpur)***

Held that

*“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 the investigation. As a result, we hold that document No.7 is a non-speaking document.”*

***CBI vs VC Shukla 3 SCC 410***

*The Hon’ble Supreme Court has held that loose sheets of paper cannot be termed as ‘book’ within the meaning of s. 34 of Evidence Act. It has also been held therein by the Hon’ble Supreme Court that even correct and authentic entries in books of account cannot, without independent evidence of their trustworthiness, fix a liability upon a person. The Hon’ble Supreme Court also observed that even assuming that the entries in loose sheets are admissible under s. 9 of the Evidence Act to support an inference about correctness of the entries still those entries would not be sufficient without supportive independent evidence.*

***Rakesh Goyal Vs. ACIT (2004) 87 TTJ (Del) 151 –***

*The findings of Hon’ble Tribunal was as under:-*

*“20.1 After perusing the findings of the CIT(A) and the submissions of both the parties, we do not find any infirmity in these findings. Firstly the finding of the CIT(A) has not been controverted by the learned Departmental Representative by*

*filing any positive evidence. The copies of the pages found from the possession of the assessee are placed in the paper book and after going through these papers, we find that these are simply deaf and dumb documents and they cannot be considered for making any addition. This is a settled principle of law that any document or entry recorded in those documents should be corroborated with positive evidence. Here in the present case nothing has been corroborated or proved that assessee was dealing in money lending business.”*

**Mohan Foods Ltd Vs. DCIT (2010) 123 ITD 590 (Del) –**

*Held that --*

*although the contents of the relevant seized documents show that the amounts mentioned therein relate to some expenditure, in the absence of any other evidence found during the course of search or brought on record by the AO to show that the said expenditure was actually incurred by the assessee, the same cannot be added to the undisclosed income of the assessee by invoking the provisions of s. 69C—Assessee explained that the said entries represented estimates made by its employees in respect of proposed expenditure—There is no evidence on record to rebut/controvert the said explanation- Additions not sustainable*

**CIT Vs. S M Agarwal (2007) 293 ITR 43 (Del) –**

*Held that –*

*“In this case the department seized documents "Annexure A-28 p. 15, - gives the details of certain handwritten monetary transactions which shows that the assessee had given a loan of Rs. 22.5 lacs on interest and earned interest income of Rs. 3.55 lacs on it. The Tribunal hold this document as dumb document.*

*The relevant findings of the Tribunal as mentioned in the above order is as under:-*

*“We have ourselves examined the contents of the document and are unable to draw any clear and positive conclusion on the basis of figures noted on it. The*

*letters 'H.S.', 'T.2' and 'D-Shop' cannot be explained and no material has been collected to explain the same. Likewise, the figures too are totally unexplained and on the basis of notings and jottings, it cannot be said that these are the transactions carried out by the assessee for advancing money or for taking money. Thus, in our opinion, this is a dumb document."*

*Hon'ble High Court confirmed the findings of the Tribunal and relevant findings was as under:-*

*"12. It is well settled that the only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. So, unless and until the contents of the document are proved against a person, the possession of the document or handwriting of that person, on such document by itself cannot prove the contents of the document. These are the findings of fact recorded by both the authorities i.e. CIT(A) and the Tribunal."*

*"15. Similarly, in the present case, as already held above, the documents recovered during the course of search from the assessee are dumb documents and there are concurrent findings of CIT(A) and the Tribunal to this effect. Since the conclusions are essentially factual, no substantial question of law arises for consideration".*

**Jayantilal Patel Vs. ACIT & Ors (1998) 233 ITR 588 (Raj) –**

Held that -

*"During search at the residence of Dr. Tomar, the Department official found a slip containing some figures. This piece of paper claimed to have been recovered at the time of search contains figures under two columns. In one column, the total of these figures comes to Rs. 17,25,000 from 31st May, 1989, to 8th Dec., 1989, and in the other column, the total of these figures comes to Rs. 22,12,500. An addition of Rs. 22,12,500 on the basis of figures on a small piece of*

*paper in respect of purchase of Plot No. B-4, Govind Marg, Jaipur was made by the AO. This plot B-4, Govind Marg, Jaipur, has been purchased jointly by Dr. Tomar, Dr. Mrs. Tomar and B.S. Tomar, HUF.*

*Held that no addition on account of entries on a piece of paper which is claimed to have been found at the time of search, can be made, treating the figures as investment for purchase of plot No. B-4, Govind Marg, Jaipur in the hands of Dr. Tomar, Dr. Mrs. Tomar and B.S. Tomar HUF.”*

**N K Malhan Vs. DCIT (2004) 91 TTJ (Del) 938 -**

*Held that –*

*“We have perused the aforesaid explanation and the seized document placed at assessee’s paper book-I pp. 48 and 50. The document does not state of any date or the year against the entries written therein. It does not show whether the assessee has made or received any payment. It also cannot be deciphered from the said documents that the entries therein pertain to the block period. The AO also did not bring on record any material to show that any investment has been made by the assessee in any chit fund company or otherwise. The document found and seized might raise strong suspicion, but it could not be held as conclusive evidence without bringing some corroborative material on record. The document contained only the rough calculations and was silent about any investment. On the basis of such a dumb document, it cannot be said that there were investments made in fact by the assessee. Heavy onus lay upon the Revenue to prove that the document gives rise to undisclosed investment by the assessee. This onus has not been discharged. Accordingly no addition of undisclosed income could be made on the basis of such a document. Such a view has also been entertained by the Hon’ble Allahabad High Court in CIT vs. Dayachand Jain Vaidya (1975) 98 ITR 280 (All). The addition so made, therefore, is directed to be deleted.”*

**Stanamsingh Chhabra vs. Dy. CIT (2002) 74 TTJ (Lucknow) 976:**

*None of the loose papers seized are in the hand writing of the assessee. There is some jotting by pencil in some coded form on the loose papers made by the surveyed person or some other person. Moreover, no entries are supported by any corroborative evidence; such loose papers can not be called even the documents as they are simply the rough papers to be thrown in the waste paper basket. In this connection, the assessee relies upon the court decisions.*

**CIT Vs. Chandra Chemouse P. Ltd. (2008) 298 ITR 98 (Raj.):**

*it is held that –*

*(i) Additions can be made only when evidence is available as a result of search or a requisition of books of accounts or documents and other material. However additions cannot be made on the basis of inferences.*

*(ii) No facts were available to AO after search and inference of AO did not fall within the scope of Section 158BB.*

*(iii) Deletion of additions made by Tribunal of assumed undeclared payments made for purchase of property was on basis of facts.*

**Ashwani Kumar V. ITO (1991) 39 ITD 183 (Del) and Daya Chand V. CIT (2001) 250 ITR 327 (Del) and S.P. Goel V. DCIT (2002) 82 ITD 85 (Mum.) :**

*Nine out of 19 slips found were without any name or amount and therefore were dumb documents and no adverse inference could be drawn.*

**Common Cause (A Registered Society) Vs. Union of India – 30 ITJ 197 (SC).**

In this case, the Hon'ble Court held that without any independent evidence or corroborative material, no addition is permissible on the basis of loose paper jottings & notings. The relevant paras of the order are as under :-

*16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in*

*the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible*

**17. It has further been laid down in V.C. Shukla (Supra) as to the value of 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. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.**

18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted hereinbelow :-

"14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words:

"An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do so for his future purpose. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. They have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

19. *With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus;*

*“37. In Beni v. Bisan Dayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts.”*

**20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.**

9. Further, in numerous other case-laws, Hon’ble courts have consistently upheld the view that no addition could be made in the hands of the assessee on the basis of the dumb loose papers seized during search, in absence of any corroborative material to

show unaccounted cash payment by the assessee. Some of the case-laws are as under:-

**M M Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 2000**

*Held that “no addition could be made in the hands of assessee on the basis of the dumb loose slips seized from his residence, in the absence of any corroborative material to show payment of any undisclosed consideration by the assessee towards purchase of land”.*

**Monga Metals (P) Ltd Vs. ACIT 67 TTJ 247 (All. Trib)–**

*Holding that Revenue has to discharge its burden of proof that the figures appearing in the loose papers found from assessee’s possession constitute undisclosed income. [In the present case, loose papers were not even seized from assessee’s possession].*

**Pooja Bhatt Vs. ACIT (2000) 73 ITD 205 (Mum. Trib)**

*Held that where document seized during search was merely a rough noting and not any evidence found that actual expenditures were not recorded in books of account, additions not justified. [In the instant case, similarly no other corroborative evidence was found in search to prove that details/figures mentioned in notings on page 117 to 119 of A/1 represent ‘on money’ payments by the assessee].*

**Atul Kumar Jain Vs. DCIT (2000) 64 TTJ (Del. Trib) 786 –**

*Held that additions based on chit of paper, surmises, conjectures etc could not be sustained in the absence of any corroborative evidence supporting it. [Similarly in present case, neither either parties have admitted payment/receipt of ‘on money’ nor any corroborative evidence was seized to support the findings of the AO].*

**S K Gupta Vs. DCIT (1999) 63 TTJ (Del.Trib) 532**

*Held that*

*“that additions made on the basis of torn papers and loose sheets cannot be sustained as same do not indicate that any transaction ever took place and does not contain any information in relation to the nature and party to the transaction in question.”*

**Jagdamba Rice Mills Vs. ACIT (2000) 67 TTJ (Chd) 838**

*Held that*

*“No addition can be made on dump documents”.*

10. On consideration of above facts in the light of the judicial pronouncements (supra), we are of the view that the additions have been made on the basis of a dumb paper as the agreements were not executed nor they were signed by any of the parties and simply on the basis of unsigned unexecuted documents, the additions cannot be made on merely assumptions and surmises. Nothing has been brought on record that these agreements were executed subsequently or the said transaction took place. In some of the agreements, the assessee's name does not appear as is evident of page nos. 32 & 39 of the paper book. There is no iota of any evidence that the assessee has made the payment in cash in execution of these agreements. Under these circumstances, we

do not find any reason to interfere with the findings of the Id. CIT(A) on this issue. Therefore, we confirm the same. Accordingly, ground no.1 raised in the departmental appeal is dismissed.

11. So far as ground no.2 with regard to challenging the addition of Rs.25 lacs made on account of unexplained unsecured loan is concerned, the facts as culled out from the record are that the AO during assessment proceedings found that assessee has taken unsecured loans of Rs.25,00,000/- in AY 2014-15. The AO during the course of assessment proceedings required the assessee to explain the source, genuineness of loan and identity of the lender. The assessee was asked by AO to furnish confirmations, bank account statement and ITR of the creditors. The assessee before AO failed to furnish the desired documents. Therefore, the Assessing Officer made the addition under consideration. However, the assessee during appellate proceedings, furnished confirmation, bank account statement and copy of ITR of all the lenders. A copy of these additional evidences was also forwarded to the AO for comments. Before the Id. CIT(A), the assessee submitted that it had received advance against sale of land at Satgari of Rs. 25,00,000/- during the year

through account payee cheques from Smt Harpreet Saluja. The advance amount was erroneously classified as “Unsecured Loan”. The cheque was physically handed over to the assessee by Mrs. Saluja and accordingly credited to her account. The cheque was issued by Mr. Ish Arora. The assessee in support had filed copy of confirmation of Shri Ish Arora along with a copy of his ITR and bank statement containing relevant entries. The ld. CIT(A) decided the issue as under:

**“4.5.2** *I have considered the facts of the case, written submissions filed by the appellant, findings and remand report of the AO. The addition was found to have been made on the failure of the assessee to furnish evidences justifying the identity and creditworthiness of the lender and the genuineness of the transaction. However during the appeal proceedings the assessee has furnished the confirmation of the lender and the copy of his ITR and bank account. Apparently, the AO has completely misunderstood and erred in treating advance received against sale of land as unsecured loan in the first place. Further, the appellant has filed confirmation of Shri Ish Arora, copy of ITR and bank account statement. On perusal of the evidences filed by the appellant it is seen that Shri Ish Arora vide confirmation letter dated has admitted that a sum of Rs. 25,00,000/- was given as token money for purchase of land vide cheque no 643783 dated 03.12.2013 of Dena Bank. Further, the token money is still outstanding in the hands of appellant because the necessary compliance has not been made by the appellant. Shri Ish Arora has been earning income from salary, house property and profit from firms.*

**4.5.3** *As discussed above, the appellant has furnished all details such as documents relating to identity, and creditworthiness of the lenders and genuineness of the transactions. Thus, appellant has furnished all the required details in order to prove genuineness of the transaction and*

*creditworthiness & identity of the loan creditor. Therefore, the AO was not justified in making addition on account of unsecured loan, however, the same was advance against sale of land. Thus, keeping in view the documentary evidences filed by the appellant, the addition made by the AO amounting to **Rs.25,00,000/- in AY 2014-15 is Deleted.** Therefore, the appeal on this ground is **Allowed.**”*

12. Now, the Revenue is in appeal before this Tribunal. Before us, the Id. CIT-DR relied upon the order of the Assessing Officer whereas the learned Counsel for the assessee relied upon the order of the Id. CIT(A).

13. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that during the previous year, the assessee had received unsecured loans from Smt. Harpreet Saluja. It was submitted before the Id. A.O. that the above loan is duly recorded in the regular books of accounts and has been received through the banking channel. The assessee could not submit the necessary details as the same were not available at the time of the assessment and the Assessing Officer made the addition on the ground that in absence of the bank statement and the income tax returns the genuineness and the credit worthiness of the parties are not established. However, we find that in the appellate proceedings,

all details like the bank statements, income tax returns etc. were filed before the ld. CIT(A) with an application under rule 46A. The Ld. CIT(A) sent all the papers to the Ld. A.O. for his comment and the remand report. The ld. CIT(A) after considering the submissions and facts of the case deleted the additions on the ground that the assessee has furnished all details such as, the documents relating to the identity, credit worthiness of the lender and genuineness of the transaction. Thus, prima facie the liability of the assessee to prove the genuineness, identity and credit worthiness stands discharged. We also find that the necessary papers to establish genuineness of the transaction were filed and the assessee had proved beyond doubt the identity of the lender, credit worthiness and the genuineness. By filing these requisite documents, the assessee established the Identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. Thus, the assessee had satisfied all the three conditions required for genuineness of the transaction. Our view is supported by the ratio laid down in the following judicial pronouncements:

a. Umesh Electricals vis Asst. CIT(2011) 18 IT] 635  
(Trib.Agra): (2011) 131 ITD 127: (2011) 141 TTJ

*Establishment of identity and credit-worthiness proved- Assessee produced the bank account of creditor in his bank account on the same day on which loan was given- Assessee furnished the cash flow statement of creditor- Based on inquiry, AO noted that creditor was engaged in providing accommodation entries- HELD- In group cases, it has been held that there was no evidence against the creditor to prove that he was providing accommodation entries- Further, mere deposit of money by the creditor on the same day, does not establish that the loan is not genuine- Assessee has proved the source of credit and also the source of Source - Addition cannot be made.*

*b. Aseem Singh v/s Asst. CIT (2012) 19 ITJ 52 (Trib.- Indore) Identity and credit-worthiness proved- Assessee took loan of Rs.1, 00, 000/- confirmation of creditor was filed- Lower authorities made addition u/s 68 holding that amount was deposited in cash in the bank account of lender immediately prior to date of loan \_ HELD- Assessee has established the identity- The party has confirmed the transaction- If AO doubted the transaction, AO should have called creditor u/s 131 - Addition cannot be made.*

14. On consideration of above facts in the light of the judicial pronouncements (supra), we are of the view that since the assessee had established the genuineness of the transaction from all the sides, the ld. CIT(A) was right in deleting the addition. Therefore, we confirm the order of the ld. CIT(A) on this issue. Accordingly, ground no.2 raised in the appeal of the Revenue is also dismissed. Thus, departmental appeal i.e ITA No.218/Ind/2020 is dismissed.

**M/s. Signature Builders & Colonisers, Bhopal-A.Y.2014-15**

In ITA No.219/Ind/2020 for the assessment year 2014-15, the Revenue has raised the following grounds of appeal:

- “1. *On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.3,00,00,000/- made by the Assessing Officer on account of admission of undisclosed income.*”

15. Facts as culled out from the record are that facts as culled out from the orders of the Revenue Authorities are that the assessee is a partnership firm and filing the returns regularly. A search was conducted on the Signature Group on 29.1.2014 and search action was also taken against the assessee which commenced on 29.1.2014 and concluded on 31.1.2014. Statement u/s 132(4) of Ms. Rekhi Dwivedi, the In-charge of the accounts department was recorded on 30.1.2014 and 31.1.2014. Statements were also recorded of Mr. Deepak Hariramani (looking after Marketing) and Mr. Prabodh Mathur (the Architect of the project) on 30.1.2014. In the statements, questions were raised regarding various loose papers found and the books of account maintained by the assessee. Subsequently statement of Mr. Rajkumar Khilwani, one of the partners, was recorded on

02.02.2014 in which he surrendered the income of Rs. 1100 Lakh on account of cash receipt outside the books of account jointly in the case of the assessee and in case of the other relevant firms. However, the same was not offered as income in the return filed. Thus, the statement of Shri Rajkumar Khilwani was recorded after the completion of the search and seizure at the premises of the assessee. However, while filing the returns, the assessee retracted from the said surrender and filed the returns on the basis of the accounts which are duly audited. In the course of the assessment proceedings, all the information as required by the AO from time to time was furnished. The assessee is in the business of real estate, builders and developers. The assessee had maintained regular books of account in which all the expenses including the cost of construction were duly recorded. These books were presented before the AO during the course of assessment proceedings and were duly checked by him and no deficiency was found in the books of account or the records maintained. It was submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. made the addition

on the basis of the statement recorded during the course of the search.

16. Being aggrieved, the assessee approached the ld. CIT(A) and the ld. CIT(A), deleted the addition relying on the decision of the various High Courts and the decisions of this Bench in the cases of Ultimate Builders in ITA 134/IND/2019 dated 9.8.2019 and Sudeep Maheshwari in ITA No.524/Ind/2013 dated 13.2.2019. The Ld. CIT(A) observed that the additions have been made merely on the basis of the statement recorded without specific reference to any incriminating material found during the course of the search suggesting any earning of unaccounted income.

17. Being aggrieved, the Revenue and the respective assessee are in appeals. Ld. CIT-DR relied upon the orders of the Assessing Officer whereas learned Counsel for the assessee submitted that no incriminating evidence was found during the course of search or afterwards during post search enquiry or pre assessment enquiries to suggest that the assessee has incurred any unrecorded expense. Therefore, the assessee was justified in retracting from the declaration made for additional income u/s 132(4). The ld. CIT(A) relied on various case laws and after

considering the submissions of the assessee deleted the addition. Thus, learned Counsel for the assessee submitted that the Id. CIT(A) was right in deleting the addition.

18. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that in the course of the assessment proceedings all the information as required by the AO from time to time was furnished. The assessee is in the business of real estate, builders and developers. The assessee had maintained regular books of account in which all the expenses including the cost of construction were duly recorded. These books were presented before the AO during the course of assessment proceedings and were duly checked by him and no deficiency was found in the books of account or the records maintained and no incriminating evidence was found during the course of search or afterwards during post search enquiry or pre assessment enquiries to suggest that the assessee has incurred any unrecorded expense. Therefore, while filing the returns, the assessee retracted from the said surrender/the declaration made for additional income u/s 132(4) and filed the return on the basis of the accounts

which are duly audited. We find that entire records found were seized and a panchnama was prepared on 31.01.2014 which was the last panchnama drawn in the case of the assessee and no further panchnama was drawn. Subsequently statement of Mr. Rajkumar Khilwani, one of the partners was recorded on 02.02.2014 in which he surrendered the income of Rs. 1100 Lakh in the case of the assessee and in the case of other concerns. The same was not also offered as income in the return filed. Thus, the statement of Shri Rajkumar Khilwani was recorded after the completion of the search and seizure at the premises of the assessee. The said statement was recorded on 02.02.2014 afters search and seizure operation at 18-19 Kolar Castle, Chuna Bhatti Square, Kolar Road, Bhopal in the case of Signature group, as such it can be concluded that the said statement was not in connection with the search operation carried on in the case of the assessee at Raipur. Thus the statement under consideration cannot be said to have been recorded during the course of search in the case of the assessee. We find that it was also submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. made the addition simply on the basis of

the statement recorded during the course of the search. The ld. A.O. narrated number of documents found during the course of the search. However, we find that none of these documents pertain to the assessee and the ld. A.O. merely relied on the statement recorded u/s 132(4). On the sole ground of the declaration in the statement the addition was made. We further find that the ld. CIT(A) deleted this addition relying on the decision of the various High Courts and the decision of ITAT Indore Bench in the cases of Ultimate Builders in ITA 134/IND/2019 dated 9.8.2019 and Sudeep Maheshwari in ITA No.524/Ind/2013 dated 13.2.2019. The Ld. CIT(A) observed that the addition was made merely on the basis of the statement recorded without specific reference to any incriminating material found during the course of the search suggesting any earning of unaccounted income. Thus, we are of the view that no addition was warranted as the surrender was not made with reference to any loose paper seized during the course of search and was accordingly not in accordance with the provisions of section 132(4) as the Ld. AO failed to bring on record any specific instance of the assessee having earned any undisclosed income or having made any unexplained investment which could justify

the addition under reference. The sole basis for making the addition is the statement made by one of the partners. The Ld. A.O. did not make any addition for the documents found. Further, we find that the question asked and the answer given in the statement recorded were both vague and general in nature and were not with reference to any specific document or asset found during the course of search which would indicate the acceptance of the assessee of earning of any unrecorded income. Rather the assessee has made a categorical unambiguous statement that the assessee has not earned any unrecorded income as is evident from the statement of Mr. Rajkumar Khilwani recorded as under:

*Q-9: Do you take any payment from customers in cash other than the sale price mentioned in the registry and additional charges recovered.*

*A-9: No. No additional payment is taken in cash in addition to above*

Thus, we are of the view that no addition can be made without finding any incriminating material merely on the basis of the declaration u/s 132(4). Our view is supported by the direct

judgment of the this Indore Bench of Tribunal in the case of Shri Sudeep Maheshwari in ITA 524/IND/2013 pronounced on 13/02/2019 and in the case of M/s Ultimate Builders in ITA 134/2019 pronounced on 09/08/2019. The Tribunal further deleted similar additions in the case of Signature Builders in ITA 185&186/IND/2018 and in the case of Signature Infrastructure in ITA No (SS)187&188/IND/2018 vide order dated 08.1.2021. Copies of these decisions have been filed in the paper book. We find that the Tribunal has relied on the various judgments of the various High Courts specially the decision of the Hon. Jharkhand High Court in the case of *Shri Ganesh Trading co. v/s. CIT (2013) 257 CTR 159* and the decision of Hon. Gujrat High Court in the case of *Kailashben Mangarlal Choksi v/s. CIT (2008) 14 DTR 257 (Guj)*. The relevant portion of the order dated 8.1.2021 passed in the case of *Signature Builders & in the case of Signature Infrastructure* (supra) is reproduced hereunder:

“17. Now we take up Ground No.3 raised for Assessment Years 2013-14 and 2014-15 in the case of *Signature Builders* vide ITA No.185&186/Ind/2018 through which common issue has been raised by the assessee contending that Ld. CIT(A) was not justified in confirming the addition made by the Ld. A.O for the amount declared by the assessee as additional income of Rs.25,00,000/- and Rs.3,00,00,000/- for Assessment Year 2013-14 and 2014-15 respectively in the statement given during the course of search u/s 132(4) of the Act.

18. Brief facts relating to this common issue as culled out from the records and as narrated by the Ld. Counsel for the assessee are that a search was

conducted at the premises of the Signature Group on 29.01.2014 and also at the premises of the assessee firm. In the case of the assessee the search commenced on 29.01.2014 at 08.45 A.M and was concluded at 08.00 AM on 02.02.2014. The proceedings continued for 4 days (96 hours) without any break. The statement of Mr. Raj Kumar Khilwani commenced on 01/02/2014 and was concluded on 02/02/2014. During the course of the statement, the assessee declared the additional income of Rs.25,00,000/- for the A.Y. 2013-14 and Rs. 3 crores for the A.Y. 2014-15 (Pg.222-240 of PB at page 239). In the statement Q.27 was asked as "during the course of search at Bhopal and Raipur many loose papers have been found for which no satisfactory answer and explanations have been given. In relation to these papers, an opportunity is given for explanation after consulting the other partners/ directors. The assessee gave a reply as I have seen the loose papers of Raipur office and consulted the partners/ directors. For these loose papers and for receipt of unaccounted money for sale of some units I offer a sum of Rs.11 crores as undisclosed income for F.Y.2013-14 in the following firms

- a. Signature Developers
- b. Signature Infrastructure
- c. Signature Builders
- d. Signature Builders and Colonisers

19. The additional income disclosed in various cases has been mentioned by the ld. A.O. at Pg.9 of the order which included the amount of Rs.3,25,00,000/- in the case of the assessee.

20. It was submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. has made the addition simply on the basis of the statement recorded during the course of the search. The ld. A.O. has narrated number of documents found during the course of the search at Pg. 14 & 15 of the order. None of these documents pertains to the assessee. In para 9 the ld. A.O. has merely relied on the statement recorded u/s 132(4). On pg.24 he has merely stated that several incriminating documents were confronted for which the assessee was unable to explain. On the sole ground of the declaration in the statement the addition has been made. The ld. CIT(A) upheld these additions relying on the evidence and holding that the declaration made u/s 132(4) is binding on the assessee.

21. Now the assessee is in appeal before the Tribunal.

22. Ld. Counsel for the assessee submitted that no addition was warranted as the surrender has not been made with reference to any loose paper seized during the course of search and was accordingly not in accordance with the provisions of section 132(4) of the Act. The AO has failed to bring on record any specific instance of the assessee having earned any undisclosed income or having made any unexplained investment which could justify the addition under reference. The sole basis for making the addition is the statement made by one of the partners. The Ld. A.O. has made various additions for the documents found. Thus, all the loose papers and the investments have been considered by the A.O. and accordingly he has made the additions under various heads. After making the additions on the basis of various

*papers there remains no scope for making the addition on the basis of declaration made in the statement. It could be observed that the question asked and the answer given in the statement recorded were both vague and general in nature and were not with reference to any specific document or asset found during the course of search which would indicate the acceptance of the assessee of earning of any unrecorded income. Rather the assessee has made a categorical unambiguous statement that the assessee has not earned any unrecorded income. Reference in this regards may be made to the statement of Mr. Rajkumar Khilwani recorded on 01-02/02.2014*

*Q-9: Do you take any payment from customers in cash other than the sale price mentioned in the registree and additional charges recovered.*

*A-9: No. No additional payment is taken in cash in addition to above 23. It is further submitted that no addition can be made without finding any incriminating material merely on the basis of the declaration. In this connection the attention is drawn to the direct judgment of the Hon'ble Indore Tribunal in the case of Shri Sudip Maheshwari in ITA 524/IND/2013 pronounced on 13/02/2019 and in the case of M/s Ultimate Builders in ITA 134/2019 pronounced on 09/08/2019. The Hon'ble Tribunal has relied on the various judgments of the various High Courts specially the decision of the Hon. Jharkhand High Court in the case of Shri Ganesh Trading co. v/s. CIT (2013), 257 CTR 0159 and the decision of Hon. Gujrat High Court in the case of Kailashben Mangarlal Choksi v/s. CIT (2008) 14 DTR 257. Under these circumstances the additions sustained by the ld. CIT(A) are bad in law. In view of this, it is humbly prayed that the addition sustained by the Ld. CIT(A) deserves to be deleted.*

*24. Per contra Ld. Departmental Representative vehemently argued supporting the order of lower authorities and submitted that the statement given by various persons on behalf of the assessee company was the statement on oath given u/s 132(4) of the Act and there was no coercion or undue influence and no pressure by the revenue authorities for making such surrender. Further there was no retraction within the reasonable time and the action of the assessee was an after thought. Ld. CIT(A) has rightly confirmed the addition and same needs to be upheld.*

*25. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions relied by Ld. Counsel for the assessee. Through Ground No.3 raised for Assessment Years 2013-14 & 2014-15 assessee has challenged the finding of Ld. CIT(A) confirming the addition of Rs.25,00,000/- and Rs.3,00,00,000/- made by the Ld. AO for Assessment Years 2013-14 & 2014-15 respectively for the amount declared by the assessee u/s 132(4) of the Act contending that the same is without corroborating with any incriminating material found during the course of search.*

*26. We observe that the search was conducted on Signature Group including the assessee on 29.1.2014. Certain loose papers were seized. Additional income of Rs.3,25,00,000/- (Rs. 25,00,000/- + Rs.3,00,00,000/-) was offered for Assessment Years 2013-14 and 2014-15 respectively. However in the return of income filed post search u/s 153A of the Act such*

additional income of Rs.25,00,000/- and Rs.3,00,00,000/- was not offered in the return of income. During the assessment proceedings it was submitted that various loose papers and documents narrated by the Ld. A.O found during the course of search does not pertain to the assessee. Since there was no such incriminating material relating to the assessee found during the course of search relating to the addition in question the alleged addition was made purely on the basis of the statement given u/s 132(4) of the Act.

27. We also observe that in the assessment order as well as order of the first appellate authority there is no mention of any incriminating material having its nexus with the alleged income declared u/s 132(4) of the Act. The Ld. A.O has failed to prove on record any specific instance with support of incriminating material found during the course of search which could show that the assessee has earned the alleged undisclosed income. It is not in dispute that various other additions have been made by the Ld. A.O for the undisclosed investment u/s 69B, undisclosed investment in projects of land and unexplained unsecured loan as well as unexplained cash u/s 69A of the Act. However specifically with regard to the addition of Rs.25,00,000/- and Rs.3,00,00,000/- made for the Assessment Years 2013-14 and 2014-15 the same is purely based on the statement given on oath u/s 132(4) of the Act by the authorised representative on behalf of the assessee which was collectively surrendered as additional income on behalf of various group concerns. But without the support of any incriminating material on which the revenue authorities were able to lay their hands, this addition totalling to Rs.3.25 crores (Rs.25,00,000/- + Rs.3,00,00,000/-) is based only on the statement given u/s 132(4) of the Act.

28. Now the moot question remains that “whether the Ld. A.O was justified in making the addition purely on the basis of statement given u/s 132(4) of the Act without proving on record any corroborative evidence or incriminating material found during the course of search which could have direct nexus with the alleged addition of Rs.3.25 crores”.

29. We observe that similar issue came up before this Tribunal in another group concern M/s Ultimate Builders V/s ACIT ITA No.134/Ind/2019 order dated 09.08.2019. M/s Ultimate Builders was also subjected to search u/s 132 of the Act on 29.1.2014 being part of the same Signature group. From perusal of the impugned order of Ld. CIT(A) in the case of M/s Signature Builders observed at page 64 & 65, Ld. CIT(A) has given the brief details of the additional income admitted by the authorised person of M/s Signature group which is as follows;

S.No	Concern/F.Y	2012-13	2013-14	Total
1	Signature Infrastructure	50	300	350
2	Signature Builders	25	300	325
3	Signature Builders and Colonisers	25	300	325

4	Signature Developers		100	100
Total				1100
5	Om Builders		275	275
6	Om Construction	50	750	800
7	Sainath Infrastructure P Ltd		25	25
Total				1100
8	Ultimate Builders		225	225
9	Virasha Infrastructure		225	225
Total				450
10	M/s Sainath Colonizers Pvt. Ltd		110	110
11	Shri Anil Kered Khilwani		40	40
Total				150

30. From the above we find that in the case of M/s Ultimate Builders also additional income was surrendered in the statement given u/s 132(4) of the Act for which the addition was made by the Ld. A.O without corroborating it with any incriminating material and the addition was confirmed by Ld. CIT(A). When the matter travelled before this Tribunal the addition of Rs.2.25 crores was deleted by this Tribunal observing as follows:-

**“9.** We have heard rival contentions and perused the records placed before us and carefully gone through the judgments referred to and relied by both the parties. The sole grievance of the assessee raised in Ground No.1 of the instant appeal is against the order of Ld. CIT(A) confirming the addition of Rs.2,25,00,000/- made by the Ld. A.O on account of undisclosed income surrendered during the course of search by the partner of the assessee firm.

**10.** At the cost of repetition we would like to recite and recapitulate the facts once more. The assessee is a partnership firm engaged in real estate business. It is the part of Signature Group. Search action was initiated in the Signature Group and its associates on 29.1.2014. The assessee’s association with the Signature group is on account of the common partners in various concerns. Assessee is separately assessed to tax. Search u/s 132(4) of the Act was initiated in the case of the assessee on 29.1.2014 and was concluded on 31.1.2014. This fact is proved on the basis of “panchanama” prepared by the officer of the search team which is placed at page 62-64. No surrender was made in the statements taken by the search team during the course of search from 29.1.2014 to 31.1.2014. There is no mention of any incriminating material referred by the Ld. A.O on the basis of which additions have been made.

**11.** The search action in the case of Signature Group continued ever after 31.1.2014. On 02.02.2014, Mr. Vipin Chouhan who is the partner of the assessee firm gave a statement

before the search team wherein he made surrender of Rs.2,25,00,000/- on behalf of the appellant firm and agreed to offer it to tax. In the very same statement he also made surrender on behalf of another firm M/s. Virasha Infrastructure in the capacity of a partner. In the very same statement he also made surrender on behalf of other companies of Signature Group. Ld. A.O during the course of assessment proceedings observed that the assessee has not offered surrendered income of Rs.2,25,00,000/- for tax and confronted the assessee. During the assessment proceedings u/s 143(3) of the Act, assessee made the retraction by submitting that no such undisclosed income was earned and therefore no such income was required to be offered to tax. However, Ld. A.O giving reference to the statement of Mr. Vipin Chouhan, partner of Ultimate Builders and also giving reference to the seized documents found during the search at Signature Group made addition for undisclosed income. When the matter came up before Ld. CIT(A) addition was confirmed. However the basis of addition was accepted to have been made only on the basis of the statement of Mr. Vipin Chouhan. No reference was made to any incriminating material having its bearing on the surrendered income. During the course of hearing before us Ld. Counsel for the assessee contended that during the course of search i.e. between 29.1.14 to 31.1.2014 no cash or unrecorded assets was found, no incriminating material was found and no income was offered to tax in the statement recorded u/s 132(4) of the Act of the person found to be in the possession and control of the books of premises. Relevant questions asked about the loose paper found were duly replied in the statement.

**12.** Ld. Counsel for the assessee further contended that since the search in the case of assessee was concluded on 31.1.2014 the alleged statement of the partner Mr. Vipin Chouhan taken on 02.02.2014 cannot be construed as a statement given during the course of search u/s 132(4) of the Act so far as relating to the assessee since the search in its case already concluded on 31.1.2014. He further submitted that no incriminating material was found during the course of search and as held by Hon'ble Tribunal in the latest decision in the case of ACIT(1) vs. Sudeep Maheshwari (supra) that "no addition was called for which has been made merely on the basis of the statement without correlating the disclosure made in the statement with the incriminating material gathered during the course of search".

**13.** So the contention of the Ld. Counsel for the assessee can be summarised that the addition cannot be made merely on the basis of statement which too was taken after conclusion of the search and no correlation has been made with the incriminating material found during the course of search.

**14.** On the other hand Departmental Representative gave reference to various judgements referred above. She mainly placed emphasis on the judgment of Hon'ble High Court of Madras in the case of Kishore Kumar V/s DCIT (supra) holding that "when there was a clear admission of undisclosed income in the statement sworn in u/s 132(4) of the Act there is no necessity to scrutinise the documents".

**15.** Now so far as the first contention of the assessee that the statement relied on by the revenue authorities cannot be construed as a statement given u/s 132(4) of the Act, we will like to first reproduce the provisions of Section 132(4) of the Act;

*“(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery to other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922 ), or under this Act.*

<sup>1</sup> *Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922 ), or under this Act.”*

**16.** The above sub Section 4 of Section 132 of the Act starts with reference to “authorised officer”, which means that the Officer who is authorised to conduct search on the assessee. In the instant case it is stated before us that the authorised officer of the assessee and that of the other concerns of Signature Group are different.

**17.** After the word the authorised officer it reads “during the course of search or seizure, examination of both the person”. During the course of search is a period during which the search is initiated and concluded. In the instant case the search was initiated on 29.1.2014 and concluded on 31.1.2014 by a authorised officer for the assessee which is verifiable from the Panchanama framed by the search team. The statement of Mr. Vipin Chouhan was taken on 02.02.2014 by another authorised officer and this date is after the conclusion of the search in the case of the assessee on 30.01.2014.

**18.** There may have been some force in the contention of the revenue authorities if the statement u/s 132(4) of the Act was taken during the course of search at the assessee’s premises or during the continuation of search, the statement may have been recorded on other places but the fact is that so far as the assessee M/s. Ultimate Builders is concerned the search concluded on 31.01.2014 and before the conclusion of the search no surrender of undisclosed income was made in the statement recorded u/s 132(4) of the Act by the persons available at the assessee’s business premises.

**19.** As regards the statement of Mr. Vipin Chouhan given on 02.02.2014 is concerned, we find that this statement contains the surrender for various group concerns and not specifically for the assessee M/s. Ultimate Builders. Reference was also given to other business concerns namely M/s. Virasha Infrastructure, Signature Infrastructure, Signature Builders and Signature

*Builders and Colonisers. Certainly the search in the case of concerns other than the Ultimate Builders did not conclude on 02.02.2014 but at that point of time on 02.02.2014 the search in the case of Ultimate Builders stood concluded two days before on 31.1.2014.*

**20.** *We therefore are of the considered view that the alleged statement given by Mr. Vipin Chouhan on 02.02.2014 may be construed as the Section 132(4) of the Act for all the other concerns named above except for the assessee i.e. M/s. Ultimate Builders. Therefore the statement referred to by the Ld. A.O on the basis of which the addition have been made in the hands of the assessee in our view cannot be construed as the statement u/s 132(4) of the Act.*

**21.** *Coming to the issue of addition made by the Ld. A.O on the basis of the statement but no reference been given to the incriminating material, we find that in the assessment order Ld. A.O has referred to various seized documents but none of them is directly related to the assessee. These seized documents are of the Signature Group and Ld. A.O has only mentioned the details of the seized document without uttering a word about their nexus with the business transaction carried out by the assessee or by pointing out assessee's connection with the seized document in name or otherwise. Thus it can be safely concluded that the addition made by the Ld. A.O was not on the basis on the incriminating material found during the course of search but only on the basis of statement of Mr. Vipin Chouhan given on 02.02.2014.*

**22.** *Recently the Co-ordinate Bench in the case of ACIT(1) VS. Sudeep Maheshwari (supra) in which the undersigned was also a co-author while adjudicating the issue that "whether addition can be made merely on the basis of statement given during the course of search without correlating the statement with incriminating material", we have decided the issue observing as follows:-*

*"6. It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.3 crores in personal name. It is also stated that the case laws as relied by the A.O. are not applicable on the facts of the present case. The assessee has relied on the decision of the Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect. However, reliance is placed on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such*

*evidence. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. In the absence of such material, coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs.69,59,000/- and Rs.75,00,000/- in A.Y. 2008-09 and 2009-10 respectively. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. Therefore, no inference is called for in the finding of the Ld. CIT(A) and is hereby affirmed. Ground raised by the revenue is dismissed.”*

**23.** *Hon’ble Gujarat High Court in the case of Kailashben Mangarlal Chokshi vs. CIT - (2008) 14 DTR 257 (Guj.), held that merely on the basis of admission, the assessee could not have been subject to additions, unless and until some corroborative evidence is found in support of such admission.*

**24.** *Hon’ble Jharkhand High Court Shree Ganesh Trading Co. V/s Commissioner of Income-tax, Tax Case No.8 of 1999 order dated 03.01.2013 held as under;*

**“4.** *We considered the submissions of the learned counsel for the parties and perused the reasons given in the impugned orders as well as reasons given in the case of Kailashben Manharlal Chokshi (supra).*

**5.** *It appears from the statement of facts that there was a search in the business premises of the petitioner’s firm as well as in the residential premises of its partner, Shri Sheo Kumar Kejriwal, on 24th September, 1987. During the course of search, the statement of Shri Sheo Kumar Kejriwal had been recorded under section 132(4) of the Income Tax Act and in the statement, he stated that he was partner in the Ganesh Trading Company, i.e. the present assessee-firm in his individual status and that he surrendered Rs. 20 lacs for the assessment year 1988-89 as income, on which tax would be paid. He further stated that other partners would agree to the same; otherwise it would be his personal liability. However, in the returns filed after search, the income of Rs. 20 lacs surrendered by Shri Sheo Kumar Kejriwal was not declared by the assessee-firm. On being asked to explain the reason for not showing the surrendered amount in the returns, it was submitted by the assessee that declaration made by the partner was misconceived and divorced from real facts. It was contended that the declaration was made after persuasion, which, according to the learned counsel for the assessee, Shri Binod Poddar, in fact, was because of*

coercion exerted by the search officers. In explanation, it was submitted that the firm or the individual had no undisclosed income. The assessee's said retraction was not accepted by any of the authorities below on the ground that the statement given by the assessee appears to be voluntarily given statement disclosing undisclosed income of Rs. 20 lacs. According to the learned counsel for the assessee, Shri Binod Poddar, the Assessing Officer had full jurisdiction to proceed for further enquiry and could have collected evidence in support of alleged admission of undisclosed income of the assessee.

**6.** We are of the considered opinion that statement recorded under section 132(4) of the Income Tax Act, 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case, all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) of the Income Tax Act and when there is incriminating admission against himself, then it is required to be examined with due care and caution. In the judgment of Kailashben Manharlal Chokshi (supra), the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also, no specific reason has been given for rejection of the assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search, there was no recovery of assets or cash by the Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation, no assets or cash was recovered from the assessee, in that situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lacs. Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore, we are of the considered opinion that in the present case, a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lacs.

**7.** In view of the above reasons, without answering the question about retrospective operation of the proviso to section 134(4), we are holding that the authorities below have committed error of law in drawing inference from the materials placed on record, i.e. admission of the assessee

*coupled with its retraction by the assessee. The Revenue may now proceed accordingly”.*

**25.** *In the light of ratio laid down in various judgments referred above including one in the case of ACIT(1) Vs. Sudeep Maheshwari (supra) decided by us wherein also we, after referred various judgments of Hon'ble High Courts have held that additions cannot be sustained merely on the basis of statement given during the course of search without correlating the addition with the incriminating seized material. Therefore the decision relied by Ld. Departmental Representative laying down the ratio that addition can be made even on the basis of statement given during the course of search u/s 132(4) of the Act irrespective of the fact whether any incriminating material is found or not, will not support Revenue in the instant case.*

**26.** *In the given facts and circumstances of the case and respectfully following the judgements and decisions referred above we find that firstly the statement given by Mr. Vipin Chouhan u/s 132(4) of the Act on 02.02.2014 cannot be considered as the statement given u/s 132(4) of the Act in the instant case of the assessee firm since the search action in case of assessee was concluded on 31.1.2014 by the Authorised Officer. Secondly as regards to other business concerns referred by Mr. Vipin Chouhan in his statement given on 02.02.2014 and in case of such business concern wherein search action u/s 132 of the Act was continuing the said statement dated 02.02.2014 will be considered as the statement u/s 132(4) of the Act. Thirdly, no reference has been given by the Revenue Authorities to any incriminating material found during the course of search at the business premises of the assessee, which could be correlated to the alleged surrendered income earned by the assessee from undisclosed sources.*

**27.** *We therefore are of the considered view that the finding of Ld. CIT(A) needs to be set aside and the addition of Rs.2,25,00,000/- deserves to be deleted since it has been made on the basis of a statement not given u/s 132(4) of the Act and without referring to any incriminating material found during the course of search. Addition for undisclosed income of Rs.2,25,00,000/- is deleted. Accordingly Ground No.1 raised in the appeal by the assessee is allowed.”*

31. *From perusal of the above finding of this Tribunal in the case of M/s Ultimate Builders (supra), we find that the common issue raised in Ground No.3 of M/s Signature Builders is identical to the issue raised and adjudicated in the case of M/s Ultimate Builders (supra). We therefore respectfully following the same and also in view of the identical fact that impugned addition of Rs.25,00,000/- and Rs.3,00,00,000/- made by the Ld. A.O was purely based on the statement given u/s 132(4) of the Act and there was no reference to any incriminating material found during the course of search which could support the impugned addition, we thus delete the addition of Rs.25,00,000/- for Assessment Year 2013-14 and Rs.3,00,00,000/- for Assessment Year 2014-15 and set aside the finding of both the*

*lower authorities and accordingly allow Ground No.3 raised in assessee's appeal for Assessment Years 2013-14 and 2014-15 raised in ITA No.185-186/Ind/2018."*

19. On consideration of above in the light of ratio laid down in these decisions (supra), we find that a common statement of Shri Rajkumar Khilwani was recorded during the course of the search in which he offered the various undisclosed incomes in various concerns of Signature Group. On the basis of this statement recorded u/s 132(4), the ld. A.O. made the additions in the cases of Ultimate Builders, Signature Builders and Signature Infrastructure and these additions have been deleted by the Tribunal in the respective cases holding that without finding any incriminating material, no additions can be made merely on the declaration u/s 132(4). We find that on the basis of the same statement and with the same reasoning, the addition has been made by the Ld. A.O. in the present case and the same has been deleted by the ld. CIT(A) following the judgment of the Tribunal (supra). In view of above discussion, we hold that the ld. CIT(A) rightly deleted the addition of Rs.3,00,00,000/- made by the Assessing Officer on account of additional income surrendered by

the assessee u/s 132(4) of the I.T. Act. Thus, ground no.1 raised by the Revenue for the assessment year 2014-15 is dismissed.

20. In the result, both the departmental appeals i.e. ITA Nos.218 & 219/Ind/2020 are dismissed.

Order was pronounced as per Rule 34 of the I.T.A.T. Rules 1963 on 21.12.2021.

Sd/-

(RAJPAL YADAV)

VICE-PRESIDENT

Sd/-

(MANISH BORAD)

ACCOUNTANT MEMBER

Indore; दिनांक Dated : 21.12.2021

*!vyas!*

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

By order

**Assistant Registrar, Indore**