

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"D" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
MS. SUCHITRA RAGHUNATH KAMBLE, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 3803, 3799, 3805 & 3802/MUM/2019  
(A.Ys: 2007-08, 2008-09, 2011-12 & 2012-13)**

Rohan Mehta {Legal heir of Late Jitendra Mehta} 2601, 26 <sup>th</sup> Floor Shiv Tapi Apartments H.G. Marg, Gamdevi Mumbai - 400007  <b>PAN: AALPM3745P</b>	v.	DCIT, Central Circle – 47 Room No. 658/676 Aayakar Bhavan M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Hema Kataria</b>
<b>Department by</b>		<b>D.K. Gupta</b>
<b>Date of Hearing</b>	<b>:</b>	<b>21.12.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>22.02.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

1. The appeals in question are directed against the consolidated order of the Learned Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.03.2019 in respect of the

assessment years A.Ys. 2007-08, 2008-09, 2011-12 & 2012-13. The facts being identical and issues common, for the sake of brevity and convenience, the appeals that have been heard together are disposed off by this common consolidated order.

**2.** The facts in brief are that a Search and Seizure action u/s 132 of the Income Tax Act, 1961 was carried out on 26.05.2011 by the DDIT, Mumbai at the business premises of M/s Rohan Developers Pvt. Ltd and associated entities promoted by Shri Harresh N. Mehta and Late Shri Jitendra N. Mehta (Legal heir, Shri Rohan Mehta) along with the residential premises of the directors, associates, employees. During the course of such action, certain loose papers were found and seized on the basis of which additions were made and assessment orders passed dated 30.03.2014 u/s 143(3) r.w.s 153A of the Income Tax Act,1961 [the Act] in respect of the AYs 2007-08, 2008-09 & 2011-12 and u/s 143(3) for A.Y.2012-13. In the course of the assessment proceedings Shri Jitendra Mehta passed away on 14.04.2012, consequently the legal heir has been brought on record and assessments accordingly completed in the name of Shri Rohan J Mehta, legal heir of Late Jitendra Mehta.

**3.** At the core of the dispute is the admission of undisclosed income made by the late Shri Jitendra Mehta in the course of search action. In the assessment orders passed by the Assessing Officer, additions have been made in the context of the loose papers found and seized during the course of search and on the basis of statement recorded u/s 132(4) dated 26/27<sup>th</sup> July 2011. The said additions which are stated to be on the basis of seized material and statement u/s 132(4) of the assessee have been confirmed by the Ld.CIT(A). Aggrieved by the additions made by the Assessing Officer and confirmed by the Ld. CIT(A), the assessee is in appeal before us.

**4.** The assessee has filed following grounds of appeal: -

**"AY.2007-08**

*1. On the facts and in the circumstances of the appellant's case and in law Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 10 35, 59,382/- on account of undisclosed income being negative peak.*

*2. On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming the AO's action of making an addition of Rs. 65,000/- on account of alleged unaccounted*

3. *The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.*

4. *The appellant prays before the Hon'ble Tribunal to delete the addition made by the AO to the extent confirmed by the Ld. CIT(A).*

**A.Y. 2008-09**

"1. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 11,82,89,580/- on account of undisclosed income being negative peak.*

2. *The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.*

3. *The appellant prays before the Hon'ble Tribunal to delete the addition made by the AO to the extent confirmed by the Ld. CIT(A).*

**A.Y. 2011-12**

1. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 1,94,877/- on account of undisclosed income being negative peak.*

2. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 17,20,35,681/- on account of alleged cash interest.*

3. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 45,99,142/on account of alleged cash interest (Shivalik).*

4. *The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.*

5. *The appellant prays before the Hon'ble Tribunal to delete the addition made by the AO to the extent confirmed by the Ld. CIT(A)."*

**A.Y. 2012-13**

1. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 4,00,000/- on account of undisclosed income being negative peak.*

2. *On the facts and in the circumstances of the appellant's case and in law the Ld. CIT(A) erred in confirming AO's action of making an addition of Rs. 60,000/- on account of alleged undisclosed interest income.*

3. *The appellant craves leave to add to, alter, amend and /or delete all or any of the foregoing grounds of appeal.*

4. *The appellant prays before the Hon'ble Tribunal to delete the addition made by the AO to the extent confirmed by the Ld. CIT(A)."*

**5.** Since the issues in question regarding undisclosed income / cash interest as raised for the various assessment years are interconnected and interlinked, they are taken up together for adjudication and disposal.

**6.** From the facts as observed from the record it is apparent that in the course of search Shri Jitendra Mehta has made disclosure of ₹.100 crores

towards undisclosed income on behalf of the entire 'Rohan Group'. Out of total disclosure of ₹.100 crores, disclosure of ₹.29,66,34,233/- pertains to added in the hands of Late Jitendra Mehta. Thereafter, the assessee has filed a letter dated 01.08.2011 stating that in the statement recorded on 26/27<sup>th</sup> May 2011 he had inadvertently admitted income of ₹.3.50 crores which is related to his brother, Harresh N Mehta. This clarification is available in Para 22.18 of CIT(A)'s order.

**7.** The genesis of said disclosure is observed to be on Page no. 1 of Annexure-1 found and seized from the residential premises of Late Shri Jitendra Mehta, wherein some noting of amounts are seen against the words "Bhoslewadi & CFO Jandewal" aggregating to ₹.20,78,51,498/-. According to the Assessing Officer, the said noting indicate unaccounted receipt on sale of Bhoslewadi Property. Further, during the course of search proceedings, based on seized material being Page nos. 8 of Annexure A1 the Assessing Officer made an addition of ₹.25,00,000/- on account of alleged cash payment for Pune Property. Also, on the basis of seized material Page no. 10 Annexure A-1, the Assessing Officer held that the assessee made unaccounted cash payments of ₹.4,71,48,962/- to brokers for purchase of Goregaon

Property. Further on the basis of Page No. 11 of Annexure A6 the Assessing Officer has made an addition of ₹.4,00,000/- on account of alleged unaccounted payment towards purchase of property at Ladiwala Chawl. On the basis of seized document Page no. 15 of Annexure, A-1 the Assessing Officer has made addition of ₹.65,000/- on account of alleged cash household expenses. Also, a promissory note for ₹.50,00,000/- being document numbered Page No. 5 of Annexure A-5 was seized from the residence of appellant's employee Shri Vijay Jasani. This promissory note was seen to contain the signature of Harresh Mehta on behalf of Rohan Developers Pvt. Ltd.

**8.** On the basis of afore mentioned seized documents being Page nos. 8,14,10,11&15 of Annexure A1, A5 & A6 the Assessing Officer has held that assessee has made unaccounted investments in purchase of Pune Property at ₹.25,00,000/-, unaccounted payment for brokerage on purchase of Goregaon Property at ₹.4,71,48,962/- and purchase of Ladiwala Chawl at ₹.4,00,000/-.

**9.** The Assessing Officer has cited the statement recorded under section 132(4) of the Act from the assessee wherein the assessee has

made disclosure of ₹.100 crores for the group as a whole in support of the additions as made.

**10.** Flowing from the disclosure made in the statement u/s 132(4), in due course the assessee submitted a cash flow statement before the search party, reckoning the unaccounted receipts and payments in the cash flow. However, while filing the return of income in response to notice u/s 153A of the Act, some of these unaccounted receipts and payments were not considered by the assessee, thus resulting in additions to the income returned, as illustrated in the table below for the AYs 2007-08, 2008-09, 2011-12 & 2012-13 which are under consideration.

AY	Particulars	Income Offered During Search			Income Offered During Return u/s 153A (D)	Addition Made (E=C-D)
		Negative Peak (A)	Undisclosed Income (B)	Income Offered During Search as per cash flow statement (C)		
2007-08	Negative Peak and Undisclosed Income	12,72,672	10,50,00,000	10,62,72,672	27,13,290	10,35,59,382
2008-09		2,29,29,097	9,80,43,198	1,20,29,72,295	26,82,715	11,82,89,580
2011-12		1,94,877	-	1,94,877	-	1,94,877
2012-13		36,17,859	50,00,000	86,17,859	82,17,859	4,00,000
2007-08	Page 15, Ann. A-1 seized from Residence	-	65,000	65,000	-	65,000
<b>Total</b>		<b>2,80,14,505</b>	<b>20,81,08,198</b>	<b>1,31,81,22,703</b>	<b>1,36,13,864</b>	<b>22,25,08,839</b>

In respect of Bhoslewadi Property

**11.** In order to have an understanding of the matter, it is imperative to revert to the statement of Shri Jitendra Mehta recorded during the course of search on 22.07.2011 being confronted with the seized material. The relevant extract of statement of Shri Jitendra Mehta is reproduced as under: -

*"Q. 5 Please refer to the page-1 of loose paper folder of Annexure-A-1 which was found and seized during the search proceedings from your residence. On perusal of the same apparently it is appearing that date wise receipts to the tune of Rs. 20,78,51,498/- made by the group. The details are appearing for Bhoslewadi. You are requested to explain the contents along with documentary evidence like copy of bank account, copy of cash book and source of such payment. Please also explain who the CFO Jandelwal is. You are requested that please explain that what treatment was given in the regular books of account, Please produce the ledger for the same.*

*Ans. I submit that if the receipts noted on this page are treated as my unaccounted income, said money should be presumed to be available with me for making the payments as noted on the other seized papers. I have incorporated all such items in the form of books and I am enclosing herewith copy of Profit & Loss Account, Balance Sheet and Cash Book generated as a result of all such transactions (Annexure 1). Based on the above I offer a sum of Rs. 29,66,34,233/- as my unaccounted income for the various assessment years as below. The above amount is computed as total of Unaccounted Income of Rs. 20,80,43,198/- and peak negative cash balance in the Cash Book of Rs. 8,85,91,035/-. I further request that if any addition on account of any unaccounted income / receipts / expenditure / payments is proposed /made in my group, the same should be incorporated in the cash flow statement and the amount of income / negative cash balance and peak thereof should be reworked accordingly.*

<b>AY</b>	<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
2006-07	Negative Peak Cash	23,44,692	23,44,692
2007-08	Unaccounted Income	10,50,00,000	

<b>AY</b>	<b>Particulars</b>	<b>Amount</b>	<b>Amount</b>
	<i>Negative Peak Cash</i>	<i>12,72,672</i>	<i>10,62,72,672</i>
<i>2008-09</i>	<i>Unaccounted Income</i>	<i>9,80,43,198</i>	
	<i>Negative Peak Cash</i>	<i>2,29,29,097</i>	<i>12,09,72,295</i>
<i>2009-10</i>	<i>Negative Peak Cash</i>	<i>2,22,47,743</i>	<i>2,22,47,743</i>
<i>2010-11</i>	<i>Negative Peak Cash</i>	<i>9,84,095</i>	<i>9,84,095</i>
<i>2011-12</i>	<i>Negative Peak Cash</i>	<i>3,28,40,736</i>	<i>3,28,40,736</i>
<i>2012-13</i>	<i>Unaccounted Income</i>	<i>50,00,000</i>	
		<i>59,72,000</i>	<i>1,09,72,000</i>
	<i>Total</i>	<i>29,66,34,233</i>	<i>29,66,34,233</i>

*It may be noted that the alleged receipts of Rs. 20,78,51,498/- noted on the seized page no. 1 of Annexure A-1 are duly covered in my disclosure of Rs. 29,66,34,233/-. The noting relating to Bhoslewadi/ CFO are not related and relevant in view of the disclosure made by me. The above disclosure is made voluntarily by me and I request that no penalty be levied or any other penal action be initiated against me. It may be noted that the above disclosure covers disclosures made by me in the course of statement recording under section 132 (4) of the Income Tax Act 1961 earlier on account of payments recorded on the various seized papers....."*

**12.** The Assessing Officer has treated the said amounts appearing in seized material as unaccounted receipts on sale of Bhoslewadi Property and made addition of ₹.10,50,00,000/- in AY 2007-08 and ₹.9,80,43,198/- in A.Y.2008-09 on the ground that assessee has accepted the same as unaccounted receipt in his statement recorded u/s 132(4) of the Act and that the disclosure is not voluntary but impelled by the incriminating material in the course of search from residence of the assessee. In respect of the addition towards unaccounted payment for purchase of property at

Goregaon, Pune and Ladiwala Chawl, the Assessing Officer has made the addition considering the noting in the seized material coupled with the statement of Late Shri Jitendra Mehta wherein he stated that he is offering the income in order to buy peace of mind and to avoid litigation.

**13.** During the course of hearing, the Ld.CIT(DR) relied upon the order of Assessing Officer contended that since the assessee himself has made the disclosure and the additions have been made on the basis of seized material found from the residence of assessee, the Assessing Officer has rightly made the additions. It is the submission of the Ld DR that the unaccounted income and expenditure is evident from the seized material. The Ld DR submitted that the assessee kept on saying in respect of each seized material in respect of which the additions are made as he is offering the income in order to buy peace of mind and to avoid litigation. However, the disclosure made by the assessee is not voluntary and has been made only when the search took place and incriminating documents found from there and hence, the admission made by the assessee is purely on the basis of incriminating material and the Assessing Officer has rightly made the additions and confirmed by the Ld.CIT(A).

**14.** The Ld AR of the assessee submitted that the noting found on the impugned seized material namely Page nos 8,14,10,11 & 15 of Annexure A1, A5 & A6 are nothing but rough noting. Nothing incriminating emanates from these rough noting. The said documents are dumb documents, it does not specify as to who has entered into the transaction and with whom, whether, the said transaction is for purchase or sale of property. She contended that there is absolutely no material evidence with the revenue to link flow of alleged unrecorded transactions with the assessee. The Assessing Officer has not brought anything on record to prove that the transactions appearing in such dumb document has actually materialized. There is no corroborative material on record of Assessing Officer to link alleged transactions with assessee. The rough noting are not accompanied with any acceptable narration. The alleged transactions are not in any way linked to the financial statements, so much so that even transactions denoted as cheque payments are not reflected in books of assessee. There is no independent corroborative material on record of Assessing Officer to prove his hypothesis that said noting reveal either unaccounted income, or unaccounted investment or unaccounted expenditure of assessee. None of the properties as mentioned appear in

the financials of the assessee. Placing reliance on the order of the jurisdictional Tribunal in the case of ACIT Vs Layer Exports Ltd [2017] 184TTJ 469, which as clarified by the Ld AR, has drawn support from the judgement of the Hon'ble Supreme Court in the case of Mohd.Yusuf & Anr Vs D.& Anr AIR 1968 Bom 112, it is contended by Ld AR that when seized material contains jottings of certain figures but same does not describe or express the contents and the contents themselves are not capable of describing the transactions the way Assessing Officer has deciphered them without support of corroborative evidence of parties attributed to the alleged transaction, the additions are without basis and unsustainable. According to Ld AR it is an ascertainable fact that assessee has not carried out any construction / development business. It is the companies Rohan Developers Ltd and associated entities who have carried out such business and not the assessee. Further, she also contended that assessee has only made a general disclosure, never admitted to having carried out any such transaction and it was clearly stated by him before search party that disclosure is made only to purchase peace of mind, at the same time denying the purported transactions. Under said circumstances, during the post search proceedings, on realization that no such transaction has been

entered into by him, he retracted from his statement by not offering any income in respect of such transactions.

**15.** In respect of each seized material/page found during the course of search, the assessee reiterated that the said pages do not contain any comprehensible, decipherable or acceptable narrations and are oblivious of the fact as to why and how such pages were drawn or to whom the said pages are actually related or for what period such papers were drawn. The noting does not even bring clarity as to who paid cash and who received it and thus, no weight can be given on such rough sheets. The Ld AR stated that in the impugned orders passed by the Assessing Officer he has considered unaccounted receipt of cash on sale of Bhoslewadi Property, unaccounted payment of brokerage for Goregaon Property, unaccounted investment in cash for Pune Property, unaccounted interest paid in cash to various parties, unaccounted interest paid in cash by Shivalik ventures Pvt. Ltd in the hands of Late Jitendra Mehta on the basis of his conditional admission in the statement dated 26/27<sup>th</sup> July 2011 recorded u/s 132(4). The Ld AR argued that the statement recorded u/s.132(4) is not sacrosanct and admission made in the statement recorded u/s 132(4) can be modified/retracted in support of which AR has

relied on the principle laid down by the ITAT in the case of Ms. Aishwarya K. Rai vs. Deputy Commissioner of Income-tax, Central Cir. 2, Mumbai reported in [2007] 104 ITD 166 (MUM.) (TM) wherein on second appeal, the Judicial Member, *inter alia*, held that subsequent retraction was correction of the earlier statement which was disagreed to by the Accountant Member. On a reference, the Third Member agreed with view of the Judicial Member holding that a subsequent statement has to be seen as a clarification of an earlier statement especially when copies of earlier statement have not been provided resulting in handicap to assessee and when assessee's version has not been got clarified from the alleged recipients regarding schedule of payments, any on-money involved and actual payments made, for reasons best known to the Department and for said reasons addition is not sustainable on the basis of statement alone. According to Ld AR, a suspicion cannot be the basis of addition. In support of her contentions, the Ld AR has further cited the following judicial precedents to press home the issues flagged by her as mentioned above:-

- a) *Karam Chand v. Asstt. CIT [2000] 73 ITD 434 (Chd.)*
- b) *Manoj Prabhakar v. Asstt. CIT [2004] 84 TTJ (Delhi) 625.*
- c) *Pullangode Rubber & Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC)*
- d) *Krishan Lal Shiv Chand Rai v. CIT [1973] 88 ITR 293 (Punj.)*

**16.** Considered the rival submissions and have given anxious thought to the questions raised before us. We have carefully considered the orders of the lower authorities, the submissions made before us by the Revenue and the relevant seized materials. It is to be noted that there are jottings in the seized material being certain figures date-wise as well as and abbreviations as deciphered by the Assessing Officer as cash/cheque towards alleged investments. Certain inferences were drawn by the Assessing Officer to the effect that certain jottings indicate receipt of cash by the assessee and certain jottings have been interpreted as payment of cash by the assessee towards either undisclosed investment in property or towards unaccounted payments. To illustrate, it is observed from the orders of lower authorities that page 1 of Annexure A-1 of seized material has been interpreted by Assessing Officer as noting relating to receipts from sale of Bhoslewadi property, page 10 of Annexure-1 as unaccounted payments made to broker ( the seized loose sheet indicating name of broker, total consideration, agreement value, cash component etc.) as towards cash payments to broker for purchase of Goregaon property, pages 8 & 14 of Annexure-1 as noting denoting unaccounted investment towards purchase of Pune Property. Such loose sheets have been seized

from the residence of the late assessee and during recording of statement u/s 132 (4) on being confronted with the loose sheets it was declared by late assessee Jitendra Mehta that if the receipts are treated as unaccounted income, said money should be presumed to be available for making payments as noted in the seized papers. What we note with bewilderment is that in the course of statement u/s 132(4) the late assessee though specifically asked to explain the jottings such as "Bhoslewadi & CFO" declined to explain stating that since a disclosure of ₹.100 crores has been made, any further clarification or explanation is not relevant. Apparently, the Revenue being satisfied with the admission as secured, has also not carried out any independent enquiry or investigation to ascertain the veracity of the transactions in movable /immovable properties as per seized material despite the assessee having renegaded from the disclosure made u/s 132(4) while filing the return of income. It is the assertion of the assessee now, as per return of income filed that such transactions never materialized and that the jottings are mere simply rough noting of certain events that did not materialize, that such admission was made by late assessee only to purchase peace and facts being otherwise, there is no undisclosed income to be offered to tax. Of

course the declarant u/s 132 (4) is no more. Moreover, from the statement recorded u/s 132 (4) it can be seen that there is no clinching admission on part of late Jitendra Mehta that such transactions as per the rough noting had taken place. It is apparent that it only in a manner of conditional declaration that such sums were admitted. Undoubtedly, the assessee has not explained the nature of transactions emanating from the seized material. It is indeed not clear as to which noting denotes purchase of property and which transaction constitutes sale of property. There is no mention as to whom the property is sold or from whom the property is purchased. There has been no attempt on part of Department to track down either seller/ buyer or even purported broker whose name has been mentioned in the seized material. In other words, the Assessing Officer, merely on the basis of statement made, has made the addition without ascertaining the nature of transaction, without ascertaining the parties involved in such transactions, what tax implication can be drawn and the additions sustained by the Ld.CIT(A) without facilitating any further enquiry or investigation. No attempt has been made by lower authorities to scratch the surface and probe in to the alleged transactions. We cannot bring ourselves to agree with the finding of the Ld CIT(A) that the

admission u/s 132 (4) is corroborated by seized material. We are unable to appreciate such a finding when there is nothing on record to explain the jottings; neither any explanation / clarification of the assessee nor any interpretation from Assessing Officer based on independent enquiries on his part. The Assessing Officer has miserably failed to bring on record who are the other parties to the purported transactions, there cannot be a sale without a buyer and there cannot be a payer without a payee. It is evident from a reading of the orders of the lower authorities that no further corroboration has been done, which could have indicated transactions of cash. We do not find any evidence on record which establishes a link between the amount mentioned in the seized documents and the assessee herein. It is our anxious observation that there is not even an iota of evidence to hold that any such transaction has been actually materialized. When the assessee had declined to explain/interpret the noting/abbreviations, it was incumbent on the Assessing Officer to bring on record independent and corroborative material to prove that the rough noting reveal either unaccounted income or unaccounted expenditure or unaccounted investment of assessee. No addition is sustainable when there is nothing to establish that such payments have been actually

received or expended especially in the absence of any enquiry with purported payer/payee of such sums. The Assessing Officer has not collected any independent evidence that could provide an acceptable narration for jottings as seen made in the seized material. We cannot persuade ourselves to agree to the finding of the Ld CIT(A) that because of the presumption available to Revenue u/s 132 (4A) r.w.s. 292C of the Act, there is no necessity of any independent enquiry for corroborating the contents of a document. As per law, the power to presume is not conclusive in that presumption is a rebuttable presumption as laid down by Hon'ble Supreme Court in Pullangode Rubber Produce Co. Vs State of Kerala [1973] 91 ITR 18. It is to be kept in mind in the instant case that assessee who made the admission, albeit conditional admission, is no more. It is settled law that though admission could be an important piece of evidence, it is not conclusive as to truth of the matters stated therein. It is well settled that the provisions of Evidence Act are not strictly applicable to proceedings under the Income Tax Act; it is the broad principles of law of evidence that apply to proceedings under the Income Tax Act. Besides, in our considered view, in the peculiar facts of the instant case where the declarant is no more and the legal heir has

renegaded from the declaration of the dead person by stating that as per his study of the documents/ books maintained as well as the seized material for the purpose of filing the return in his capacity as legal heir, such transactions had never materialized, and that such admission had been made only to purchase peace as well as avoid litigation, it was incumbent on Assessing Officer to bring independent and corroborative material on record to justify his findings on the basis of which the additions were made . In support of our view that the additions made based solely on rough jottings in seized loose sheets, which jottings have not been explained by assessee, nor has Assessing Officer brought any independence evidence in support of his hypothesis of what they represent and on the basis of which disclosure has been obtained, are not sustainable in the absence of independent, tangible, evidence. we draw support from the following orders of various courts wherein it has been held as under:

a) In the case of **ITO vs. Kranti Impex Pvt. Ltd. ITA No. 1229/Mum/2013** it was held that

*"Since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. "*

b) As per the decision in the case of **Nishan Constructions Vs. ACIT ITA No.1502/Ahd/2015**, after considering the Hon'ble Apex Court's landmark decision in Common Cause, Vs. Union of India (2017) 77 taxmann.com 245 (SC) as well as CBI Vs. V.C. Shukla (1998) 3 SCC 410 (SC) it has been held such loose sheets deserves to be treated as a dumb document when full details such as dates, name of the recipient etc. are lacking.

c) The Delhi ITAT in the case of **SK Gupta V/S DCIT 63 TTJ 532**, has held that addition made on the basis of loose sheets cannot be sustained as same does not indicate that any transaction ever took place and when it does not contain any information in relation to nature of transaction and name of the party to the transaction in question.

d) In the case of **SMC Brokers Limited v/s DCIT 109 TTJ 700**, the Delhi ITAT has held when the diary seized does not contain any evidence regarding any receipts of money and also when the diary was not written by assessee or his employees, it cannot be substantiated assessee has earned any undisclosed income hence addition based on such dumb document.

e) The ITAT, Mumbai in case of **Amarjit Singh Bakshi (HUF) v. Asstt. CIT [2003] 86 ITD 13 (Delhi) (TM)** held that any notings in loose sheet is no evidence by itself. An entry in the books of account maintained in the regular course of business is relevant for purposes of considering the nature and impact of a transaction, but notings on slips of paper or loose sheets of paper cannot fall in this category. Nothings on loose sheets of paper are required to be supported/corroborated by other evidence which may include the statement of a person, who admittedly is a party to the nothings.

f) In the case of **D.A. Patel v. Dy. CIT [2000] 72 ITD 340 (Mum.)** it has been held that simply because a sheet of paper was found during the search at the premises of an assessee, he could not be saddled with a tax liability unless it could conceivably be related to the assessee in some reasonable manner.

g) The Hon'ble Bombay High Court in case of **PCIT V. Umesh Ishrani [2019] 108 taxmann.com 437 (Bombay)** held that since the tribunal concluded that entries reflected in loose papers were not corroborated with any other evidence on record, therefore the Tribunal was justified in deleting impugned additions made by revenue.

h) As per the order of Mumbai ITAT in case of **S.P. Goyal v. Dy. CIT [2002] 82 ITD 85 (Mum.) (TM)** :

*"..... . The loose paper in itself has got no intrinsic value. ...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 lakhs. There is no such evidence found by the Revenue in the form of extra cash, jewellery or investment outside the books."*

**17.** At this juncture we also deem it appropriate to specifically consider the specific facts of the case. In the present case although Late Jitendra Mehta has made disclosure in his statement dated 26/27<sup>th</sup> July 2011 recorded u/s 132(4) on being questioned about the various allegations such as sale of Bhoslewadi Property, unaccounted payment of brokerage for Goregaon Property, investment in cash for Pune Property, unaccounted interest paid in cash to various parties, unaccounted interest paid in cash by Shivalik ventures Pvt. Ltd. and unaccounted payment in cash towards Ladiwala Chawl. However, from the record we do not find any evidence that the Late Jitendra Mehta had entered into a transaction for sale of Bhoslewadi property. We also do not find any material on record in support of the allegation that the investment towards the property in Goregaon, Pune and Ladiwala Chawl were made by the assessee Late Jitendra Mehta. It is brought to our notice that at the time of filing the

return of income in response to notices issued u/s 153A the assessee / legal heir realized that assessee is not associated with any of the projects viz. Bhoslewadi, Goregaon, Pune and Ladiwala Chawl in his individual capacity. Even during the course of recording of the Statement the assessee clarified that no cash interest was paid to the lenders who had advanced loans to various concerns of Rohan Group.

**18.** The above facts buttress our finding that when the jottings in rough sheets are not in themselves capable of expressing or describing the essence of the transaction the way Assessing Officer has deciphered them especially without corroborative evidence of parties attributed to the transaction, and when there is no material to show nexus between the assessee herein and the alleged transactions, no addition to the income can be justifiably made. In other words, it is held that no addition can be made when there is nothing to establish that such payments as alleged have been received or expended. No enquiry in this direction is seen made by the Assessing Officer. We accordingly hold that the impugned addition of on-money payment and receipts made in assessee's case is on the basis of a mere dumb document and not corroborated by any other evidence and thus, not sustainable. The additions made on the basis of

uncorroborated noting and scribbling on loose sheets is accordingly unsustainable and is therefore directed to be deleted. On the basis of the above considered findings, the addition made in respect of each year is dealt accordingly in the ensuing paragraphs.

### **A.Y: 2007-08**

#### **Ground No.1**

**19.** In A.Y. 2007-08, the Assessing Officer has made addition of ₹.10,35,59,382/- in respect of negative peak and unaccounted receipts on sale of Bhoslewadi Property based on the seized page no. 1 of Annexure A-1. In view of our findings in paragraphs 16 to 18 of said order, said addition is hereby found unsustainable and is accordingly deleted. Ground no. 1 of the assessee is allowed.

#### **Ground No. 2**

**20.** In ground 2, the assessee has assailed the addition of ₹.65,000/- made on the basis of seized material page no. 15 of Annexure A-1 which contained jottings of various amounts totaling to ₹.65,000/-. The

Assessing Officer, in the assessment order, made addition of ₹.65,000/- by holding these amounts as unaccounted cash expenses. The CIT(A) also confirmed the view of the Assessing Officer.

**21.** The AR of the assessee argued that the expenses are personal in nature and for a family of 7-8 people living in south Mumbai, it is very much normal to have household expenses of ₹.65,000/- and hence, there should not be any addition on account of such cash expenses.

**22.** We find that assessee was a director in the company engaged in the business of construction activity and he lived with his family in South Mumbai. Considering the number of family members viz., 7-8 and considering the standard of living of the assessee, the expenses of ₹.65,000/- can be considered as reasonable expenditure for meeting the household expenses and thus, in our view the noting found on the seized material pertaining to cash expenses are duly explained by the assessee and thus, the addition made by the Assessing Officer is not sustainable and is directed to be deleted. Accordingly, ground no. 2 is allowed.

### **A.Y: 2008-09**

**23.** For AY 2008-09, the only ground raised by the assessee pertains to the addition made by the Assessing Officer amounting to ₹.11,82,89,580/- in respect of negative peak and unaccounted income on sale of Bhoslewadi Property based on the seized page no. 1 of Annexure A-1. In view of our above findings given in paragraphs 16 to 18, we hereby direct to delete the said addition. Accordingly, appeal for AY 2008-09 is allowed.

### **A.Y: 2011-12**

#### **Ground No. 1**

**24.** The first ground raised by the assessee pertains to addition made by the Assessing Officer on account of negative peak & undisclosed income of ₹.1,94,877/-. The said negative peak was arrived at by the assessee after considering the impact of various seized materials as discussed above. The assessee in its statement recorded u/s 132(4) made such disclosure on account of negative peak and undisclosed income. However, while filing its return of income u/s 153A, the said amount was not offered for taxation. Hence, Assessing Officer made this addition on

account of negative peak and undisclosed income. In view of our findings given in paragraphs 16 to 18, the said addition is directed to be deleted. Accordingly, ground no. 1 of AY 2011-12 is allowed.

## **Ground No. 2**

**25.** The second ground of appeal raised by the assessee pertains to the addition of Rs. 17,20,35,681/- made by the Assessing Officer on account of alleged cash interest. Shri Samir Shah, finance broker of Rohan Group was also searched along with the Rohan group. It appears that Samir Shah arranges finance for the Rohan Group. During the course of search at residential premises of Shri Samir Shah, loose page no. 206 of Annexure A-1 was found wherein, the names of various parties were mentioned against the amounts which is related to alleged interest payment in cash to various lenders. The Assessing Officer considered the amounts mentioned in seized page as cash interest paid by Rohan Group and thus, he made addition of Rs. 17,20,35,681/- by relying on the statement of Samir Shah who has admitted that cash interest was given by the Rohan group to the various parties for the period 01/01/2011 to 31/03/2011. Mr.Samir Shah has given the list of such parties to whom cash interest

was paid during the F.Y. 2010-11 and he has worked out of the cash interest component allegedly paid by the M/s Rohan Group during this period. The details of such cash interest paid during the period 01/04/2011 to 26/05/2011 is worked to the tune of ₹.17,20,35,681/-.

**26.** In this context we deem it appropriate to quote the relevant extract of the statement of assessee in the course of search:

*"Q4 During the course of search operation at the residential premises of Mr. Sameer Shah statement u/s 132(4) of the IT Act was recorded. While confrontation of the loose papers he stated that I have arranged loans for Rohan Group. Further during the course of Prohibitory Order Operation he has submitted a master chart of the parties in which interest payment in cash and cheque was worked out. Please go through the statement and master chart and offer your comments.*

*Ans. At the outset I deny the allegations made by you. It is true that Mr. Samir Shah was claiming additional interest citing several reasons including market conditions and there was a dispute between us regarding the same. However, I categorically deny having paid such interest of Rs. 17,20,35,681/- . Having said so, I do not wish any of my associates to be inconvenienced and therefore to buy peace of mind and avoid litigations, I hereby offer the said sum of Rs. 17,20,35,681/-as unaccounted income in my case for the Financial Year 2010-11 relevant to Assessment Year 2011-12. I once again re-iterate that none of the entities have paid such interest and the disclosure of income is made by me only to buy peace of mind and avoid litigations."*

**27.** During the course of hearing, the Ld.CIT(DR) has contended that the incriminating material found from the premises of Samir Shah has been explained by him as interest paid in cash by Rohan Group and that

the assessee has also accepted the payment of interest in cash over and above cheque payments. Thus, he relied upon the finding of Assessing Officer and CIT(A) and urged to uphold the additions made by the Assessing Officer and confirmed by CIT(A).

**28.** The Ld AR of the assessee drew our attention to statement of Samir Shah recorded on 21.07.2011 u/s 132(4) of the Income Tax Act, 1961.

The relevant extract is reproduced as under: -

*"Q.38 During the course of search at your residence at Shiv-Tapi Apartment various loose papers and documents handwritten and computer print outs have been found and seized. Kindly explain the contents of the same and the manner in which these records are maintained with reference to your business.*

*Ans. I have not been able to complete graduation; do not know how to use the computer. Therefore, initially I used to maintain, the record of such loans in hand written pages. However, considering the volume of work I could not properly maintain such records and lots of errors and discrepancies erupted in such records. I was not able to maintain proper / accurate / complete records and therefore mainly used to rely on the records maintain by respective parties. Further considering the volume I requested my daughters to help me in maintaining these noting in the computer Since I did not understand how computer works, there are numerous noting which are incomplete, in parts and without any reference. A lot of trial and error was carried by me with the help of my daughters to enable me to maintain proper record of the transactions. In the process lot of incomplete noted records have been generated which were subject to checking / verification which would not make any sense in oration Therefore many of the printouts found and seized from my residence you will note that no names are written, no reference are written and some rough numbers with some rough calculations are mentioned. Few such examples are Annexure A-1 pages, 62-66, 71, 149, 194, 234, 237, Annexure A-2 page nos. 11, 12, 85. Annexure A-5 page nos. 30, 61, etc. as you can see these are the*

*pages generated in the course of such trial-and-error exercise and there is no way I can correlate them with any of the actual transactions that may have been carried out."*

*Q.39 Kindly explain since when you have started collecting cash interest from the parties?*

*Ans. The real estate sector was badly hit by slow down and it was facing numerous issues which are in the public knowledge, including severe liquidity crunch. As a result many small builders who were not having financial strengths for borrowing, started offering absurd interest rates. As a result Lenders who had lent money to my clients started demanding higher interests on the money lent by them. Therefore, there are numerous pages containing noting in respect of such higher demand of interest and calculation of differential interest over and above the interest paid to them. These workings prepared by me were tentative workings for discussions with my clients who were resisting such payment of additional interest. I may further add here that I was in the habit of writing names of persons who had referred the parties to me instead of the parties from whose bank accounts the cheques were actually received. Different parties were demanding much differential interest for various period of time. However, since all the clients had made the interest payments till 31-3-2010, all of them refused to pay such differential interest for any period prior to 31-3-2010 since the demands were made by the lenders subsequent to the year ending 31-3 2010. Further, the clients have even disputed the demand of such differential interest for the period subsequent to 1-4-2010. However, as a broker my duty is to put the lenders demand to the clients and arrive at mutually agreeable solutions. Therefore, to put a claim to the clients all these calculations were made which are found and seized from my residence. Most of these calculations were for the quarter beginning April 2010."*

**29.** In view of the above statement given by Shri Samir Shah, the Ld AR of the assessee argued that in response to question no. 38, the person who has actually carried out the noting in the seized paper has himself admitted that various papers found from his residential premises are those

generated during the course of trial-and-error exercise and it cannot be correlated with any of the actual transactions that may have been carried out. Further, in response to Q.39, he has admitted that various lenders were demanding higher rate of interest and as a broker, he prepared these proposed workings to present before his clients. Samir Shah has himself admitted that these are merely tentative workings. The AR of assessee has also pointed out that that Assessing Officer has completely ignored this part of the statement given by Samir Shah. Further, it is the submission of the AR that during the course of search, the assessee was also confronted with the statement of Samir Shah and assessee has also denied of any cash payment of interest made by him. The assessee in his statement has explained that Mr. Samir Shah was claiming additional interest citing several reasons including market conditions and there was a dispute between the two of them regarding the same. However, having said so, he admitted that he is making disclosure of Rs. 17.20 crores in order to avoid inconvenience to Samir Shah and to buy peace of mind and avoid litigation. Thus, the Ld AR contented that addition is made by the Assessing Officer merely on the basis of draft rough workings that never materialized and thus, such addition is not sustainable.

**30.** The Ld AR also drew our attention to the remand report dated 21.12.2017 given by the Assessing Officer of Shri Samir Shah during the course of assessment proceedings of Samir Shah. Para 5 of such remand report is reproduced as under: -

*"Further Late Shri. Jitendra N Mehta vide his sworn in statement dated 22/07/2011 recorded u/s 132(4) of the IT Act 1961 has in his answer to Q. No.4 (wherein he was confronted to the statement of Shri. Samir Shah) has stated that he has denied the allegation made by the department and has stated that Shri. Samir Shah was claiming for additional Interest payable to him citing several reasons Including that of market conditions however he has categorically denied of having paid any cash Interest to Shri, Samir Shah in his statement recorded which proves the version of Shri. Samir Shah mentioned in above explanation to noting found on page no. 206 of annexure A-1 was correct that it was just a noting and rough working of the interest amount payable to his clients who had invested money through him."*

**31.** Further, the Ld AR also drew our attention to the statements of various lender parties recorded u/s 131 during the course of penalty proceedings of Samir Shah. None of the parties have admitted that they have received any payment of interest in cash. The Ld AR of assessee has also submitted various documents of lenders viz., copy of their PAN, their acknowledgement of return of income and the copy of their bank statements in order to prove the identity & creditworthiness of lenders and genuineness of transaction.

**32.** We have carefully considered the matter. After hearing both the parties, in our view, the statement of the person who is creator of the document is crucial to understand the nature of transaction emanating from the said document. In the present case, Samir Shah has himself admitted that the amounts appearing in the said seized material are merely rough workings of interest prepared by him in order to present before his clients. Further, it has been brought to our notice that the Assessing Officer of Samir Shah, in his remand report, has also admitted the amounts mentioned in the seized page as rough workings. It is also observed that none of the lenders have admitted that any cash interest has been received by them. All these documents/statements support the contention of the assessee that the entries mentioned on the seized pages are merely tentative workings of additional interest and there is nothing on record to hold that such workings had materialized and cash payment of interest was actually made. Under the circumstances we are unable to sustain the addition as made. We accordingly direct that the addition of Rs. 17,20,35,681/- made by the Assessing Officer in respect of alleged cash payment of interest be deleted. Ground no. 2 raised by the assessee is allowed.

### **Ground no. 3**

**33.** Ground no. 3 raised by the assessee against the Assessing Officer 's action of making addition of Rs. 45,99,142/- on account of alleged cash interest paid the basis of seized material found during the course of search at the residence of Samir Shah. The Assessing Officer alleged that Shivalik Ventures P. Ltd., a Rohan Group company has made cash payment of interest. The Assessing Officer 's allegation is similar to the facts discussed while dealing with ground no. 2.

**34.** During the course of search at the residence of Samir Shah, amongst various papers found, one page contained noting in respect of Shivalik Ventures P. Ltd. In respect of this seized page, the statement of assessee was recorded wherein he stated as under: -

*"It may be noted that in the various loose papers found from the residence of Mr. Samir Shah, one page contains certain rough noting in respect to our group company Shivalik Ventures Pvt. Ltd. It may further be noted that the other Directors/ Shareholders of the said Shivalik Ventures Pvt. Ltd. do not know Mr. Samir Shah and the loan was arranged by me for the said Shivalik Ventures Pvt. Ltd. Since, the commercial terms for the aforesaid loan taken by Shivalik Ventures Pvt. Ltd. were negotiated by me with my broker Mr. Samir Shah, they are not involved with such claims of additional interest. Further, Shivalik Ventures Put. Ltd. has not paid any such additional interest. However, to buy peace of mind and avoid litigation, the*

*alleged additional interest in respect of the loan taken by Shivalik Ventures Pvt. Ltd. of Rs. 45,99,142/-is also offered by me."*

**35.** The Ld CIT(DR) argued that the Assessing Officer has rightly made addition since, the seized page shows the name of the Shivalik Ventures P. Ltd. and interest has been paid by it in cash. The Ld CIT(DR) relied upon the findings of Assessing Officer and CIT(A). However, the Ld AR of the assessee argued that the assessee has completely denied of making any payment in cash by Shivalik Ventures in his statement and that in order to buy peace of mind, he had offered to tax additional interest. Further, the Ld AR of assessee also placed reliance on the statement of Samir Shah, wherein he has stated that he has made tentative workings in respect of additional interest to be claimed by lenders to present it before his clients. Thus, the Ld AR contended that the addition made by Assessing Officer is purely on the basis of rough/tentative workings, hence is liable to be deleted.

**36.** We have already given our findings in favour of assessee while disposing off similar addition contested in ground no. 2 after considering the facts as per paragraph 25 to 31 above. In view of our findings as per paragraph 32 above, we hereby delete the addition made by the

Assessing Officer and confirmed by the Ld.CIT(A). Ground no. 3 is hereby allowed.

**A.Y: 2012-13**

**37.** For AY 2012-13, the first ground raised by the assessee pertains to the addition made by the Assessing Officer amounting to ₹.4,00,000/- in respect of Ladiwala Chawl based on the seized page no. 11 of Annexure A-1. In view of our above findings given in paragraphs 16 to 18 above we hereby direct that said addition be deleted. Accordingly, appeal for A.Y.2012-13 is allowed.

**38.** In the result, all the appeals filed by the assessee are allowed.

**Sd/-**  
**(SUCHITRA RAGHUNATH KAMBLE)**  
**JUDICIAL MEMBER**

Mumbai / Dated 22/02/2022

Giridhar, Sr.PS

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**