

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.309 to 313/Bang/2018
Assessment years : 2008-09 to 2012-13

The Assistant Commissioner of Income Tax, Central Circle 2(3), Bengaluru.	Vs.	Shri H.B. Sudarshan, Soorya Farm, Halenahalli, Ramanahally Post, Chickamagalur. <b>PAN: BDYPS 1663P</b>
APPELLANT		RESPONDENT

ITA Nos.1494 to 1497/Bang/2018
Assessment years : 2009-10 to 2012-13

Shri H.B. Sudarshan, Ramanahally Post, Chickamagalur. <b>PAN: BDYPS 1663P</b>	Vs.	The Deputy Commissioner of Income Tax, Circle 2(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Chandrashekar, Advocate
Respondent by	:	Shri Sumer Singh Meena, CIT(DR)(OSD)(ITAT), Bengaluru.

Date of hearing	:	03.02.2022
Date of Pronouncement	:	20.04.2022

**ORDER**

*Per Bench*

These are cross appeals by the revenue and the assessee directed against the different orders dated 24.11.2017 of the CIT(Appeals)-11, Bangalore for AYs 2008-09 to 2012-13. Certain issues are common in these appeals which were heard together and disposed of by this common order.

**ASSESSEE'S APPEALS**

2. There was a search u/s 132 of the Income Tax Act, 1961 [the Act] carried out in the premises of the Assessee on 08.06.2012. Subsequently, the Assessee's case was centralized with the office of the DCIT, central circle 2(3), Bengaluru vide Centralization notification in F. No.52/Tech/CIT/Mys/2012-13 dated: 07.12.2012. Consequent to the search a Notice u/s 153A was issued on 28.01.2014 requiring the Assessee to file his return of income for the A Y's 2008-09 to 2012-13. In response to the notice u/s. 153A of the Act the Assessee filed his returns & assessments were duly completed thereafter with certain additions being made to the Income Returned for the impugned assessment years.

**ITA No.1494/Bang/2018 (AY 2009-10)**

3. The assessee has raised the following grounds of appeal:-

- “1. The order of the learned CIT [Appeals] Bengaluru-11, Bengaluru in as much as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts of and the circumstances in the Appellant's case.
2. The appellant denies himself liable to be assessed on a total income of Rs. 1,49,53,420/- as confirmed by the learned CIT (Appeals), as against the total income declared by the

- appellant of Rs. 25,45,420/- on the facts and in the circumstances of the Appellants case.
3. The learned CIT [Appeals] is not justified in confirming the additions made by the learned A.O amounting to Rs. 61,08,000/- being the alleged undisclosed investments made in land under the facts and in the circumstances of the Appellants case.
  4. The learned CIT (Appeals) is not justified in confirming the additions made by the learned A.O by way of alleged undisclosed income arising from sale of property being in agriculture land for Rs. 52,50,000/- which is not exigible to income-tax under the facts and in the circumstances of the Appellant's case.
  5. The learned CIT (Appeals) is not justified in confirming the additions made by the A.O by way of alleged unsubstantiated liability of Rs. 11,50,000/- under the facts and in the circumstances of the Appellant's case.
  6. The Appellant denies himself liable to be charged interest under sections 234 A, 234 B and 234 C of the I.T. Act 1961 under the facts and in the circumstances of the Appellant's case . Further the levy of interest under sections 234 A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts and in the circumstances of the Appellant's case.
  7. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.
  8. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeals be allowed in full in the interest of equity and justice.”
4. Out of these grounds, the Id. AR submitted that ground Nos.3, 4 & 5 are not pressed and hence these grounds dismissed as not pressed.

5. Ground No.1, 2, 7 & 8 are general in nature which do not require any adjudication and dismissed accordingly.
6. Ground No.6 is consequential and mandatory in nature.
7. In the result, ITA No.4394/Bang/2012 is dismissed.

**ITA No.1495/Bang/2018 (AY 2010-11)**

8. The assessee has raised the following grounds:-
  - “1. The order of the learned CIT[Appeals]- Bengaluru-11, Bengaluru in as much as it is against the appellant is opposed to law, equity, probabilities, weight of evidence, facts of and the circumstances in the Appellant's case.
  2. The appellant denies himself liable to be assessed on a total income of Rs. 87,90,869/- as confirmed by the learned CIT (Appeals), as against the total income declared by the appellant of Rs. 31,76,960/- on the facts and in the circumstances of the Appellant's case
  3. The learned CIT [Appeals] is not justified in confirming the protective additions made by the A.O amounting to Rs. 7,88,909/- based on estimation of income on a substantive basis on the facts and in the circumstances of the Appellants case.
  4. The learned CIT (Appeals) is not justified in confirming the additions made by the learned A.O amounting to Rs.7,50,000/- being the income arising from the alleged undisclosed sale of property under the fact and in the circumstances of the Appellant's case.
  5. The learned CIT (Appeals) in not justified in confirming the erroneous additions made by the A.O of Rs. 40,75,000/- being the alleged undisclosed investment made in land under the facts and in the circumstances of the Appellant's case.

6. The Appellant denies himself liable to be charged interest under sections 234 A, 234 B and 234 C of the I.T. Act 1961 under the facts and in the circumstances of the Appellant's case. Further the levy of interest under sections 234 A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts and in the circumstances of the Appellant's case.
7. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.”
9. The Id. AR has not pressed grounds No.3, 4 & 5 at the time of hearing and as such, they are dismissed as not pressed.
10. Ground Nos.1, 2 & 7 are general in nature which do not require adjudication and dismissed accordingly.
11. Ground No. 6 is consequential and mandatory in nature.
12. In the result, ITA No.1494/Bang/2018 is dismissed.

**ITA No.1496/Bang/2018 (AY 2011-12)**

13. The assessee has raised the following grounds:-
  - “1. The order of the learned CIT [Appeals] Bengaluru-11, Bengaluru in as much as it is against the appellant is opposed to law, equity, probabilities, weight of evidence, facts of and the circumstances in the Appellant's case.
  2. The appellant denies himself liable to be assessed on a total income of Rs. 1,26,63,894/- as confirmed by the learned CIT (Appeals), as against the total income declared by the appellant of Rs. 1,15,47,280/- on the facts and in the circumstances of the Appellants case.

3. The learned CIT [Appeals] is not justified in confirming the additions made by the learned A.O amounting to Rs. 11,16,614/- based on estimation of income on a substantive basis on the facts and in the circumstances of the Appellants case.
  4. The Appellant denies himself liable to be charged interest under sections 234 A, 234 B and 234 C of the I.T. Act 1961 under the facts and in the circumstances of the Appellant's case. Further the levy of interest under sections 234 A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts in the circumstances of the Appellants case.
  5. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.
  6. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeals be allowed in the interest of equity and justice.”
14. Ground No.3 was not pressed by the Id. AR at the time of hearing, as such the same is dismissed as not pressed.
15. Ground Nos. 1, 2 & 5 are general in nature which do not require adjudication and dismissed accordingly.
16. Ground No.4 is consequential and mandatory in nature.
17. In the result, ITA No.1496/Bang/2018 is dismissed.

**ITA No.1497/Bang/2018 (AY 2012-13)**

18. The assessee has raised the following grounds:-
1. The order of the learned CIT [Appeals] Bengaluru -11, Bengaluru in as much as it is against the appellant is opposed to law, equity, probabilities, weight of

evidence, facts of and the circumstances in the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs.3,40,23,811/- as confirmed by the learned CIT (Appeals), as against the total income declared by the appellant of Rs. 2,94,32,720/- on the facts and circumstances of the case.
3. The learned CIT [Appeals] is not justified in confirming the additions made by the learned A.O amounting to Rs.24,09,135/- being the alleged investment made in the name of the spouse under the facts and in the circumstances of the Appellant's case on the facts and in the circumstances of the Appellants case.
4. The learned CIT [Appeals] is not justified in confirming the addition made by the learned A.O amounting 20,56,458/- based on estimate of income on a substantive basis on the facts and in the circumstances of the Appellants case.
5. The learned CIT [Appeals] is not justified in bringing to tax a sum of Rs.1,25,498/- by way of profit from the alleged undisclosed contract receipts of Rs. 15,68,725/-, which is not exigible top income-tax under the fact and in the circumstances of the Appellants case.
6. The Appellant denies himself liable to be charged interest under sections 234 A, 234 B and 234 C of the I.T. Act 1961 under the facts and in the circumstances of the Appellant's case. Further the levy of interest under sections 234 A, 234 B and 234 C of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts in the circumstances of the Appellants case.
7. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

8. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeals be allowed in the interest of equity and justice.”

19. The Id. AR has not pressed ground Nos.4 & 5 out of the above grounds, as such these grounds are dismissed as not pressed.

20. Now we will ground No.3 with regard to confirming addition of alleged undisclosed investment in land in the name of spouse at Rs.24,09,135.

21. The facts are that AO made addition of Rs.24,09,135 on the basis of seized material viz., A/HBS/10 pages 20 to 23 which is a receipt on e-stamp paper dated 8.4.2011 for Rs.29,00,000 which is said to be consideration paid towards purchase of 26 guntas at Sy.No.374, Hiremagaluru by Tejasvini Sudarshan from Murugamma and Others. The total consideration is paid by DD of Rs.5 lakhs and Rs.25 lakhs by cash, both paid on 8.4.2011 to Murugamma & Ors. Assessee accounted only Rs.4,90,865, hence the AO made addition of Rs.24,09,135.

22. We have heard both the parties and perused material on record. Assessee has not placed any evidence on record to show that the above amount was duly accounted in the books of account of the assessee. As such, it is to be considered as amount of Rs.24,09,135 is unaccounted transaction carried out by assessee. The same was sustained by the CIT(A) and we do not find any infirmity in the action of the lower authorities. The same is confirmed. This ground of appeal assessee is dismissed.

23. Next ground No.1, 2, 7 & 8 are general in nature which do not require any adjudication and dismissed accordingly.

23.1 Ground No.6 is consequential and mandatory in nature.

24. In the result, ITA No.1497/Bang/2018 is dismissed.

### **REVENUE'S APPEALS**

#### **ITA No.309/Bang/2018 (AY 2008-09)**

25. The revenue has raised the following legal ground:-

- “1. Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in accepting the ground of validity of digital evidence based on VC Shukla case rendered in 1998 however, the same has been overridden by provision of Information Technology Act 2000 and Section 2(22AA) of the I.T. Act and Section 292C of the IT Act.

26. We have heard both the parties on the issue. The main grievance of the Id. DR is that the CIT(A) overlooked the digital evidence procured during the course of search action and evidence itself shows the various incriminating transactions carried out by the assessee and same is the basis for addition and addition cannot be deleted on the reason that there is no evidence. The further contention is that section 292C creates a deeming presumption that any books of account, other documents, money, bullion, jewellery or other value articles or things are found in the possession and control of any person in the course of search action u/s. 132 or u/s. 133A as it may be, it should be presumed that it is belonging to the concerned assessee and it is the duty of assessee to explain that it is not belonging to the assessee. Thus he submitted that in the present case the assessee failed to explain the contents of CD found in the search action in his case. Being so, it cannot be rejected on the basis of judgment of Supreme Court in the case of V.C. Shukla (supra). In our opinion, the judgment in the case of V.C. Shukla (supra) is not in relation to Income-tax Act, it was relating to criminal proceedings and there was no application of section 292C of the I.T. Act in that case. In Income Tax proceedings, strict

rule of evidence is not applicable as rightly pointed out by the Id. DR. The CIT(A) should not have placed reliance on the above judgment and he should have independently examined each seized material and ought to have decided the issue on the basis of weightage of those evidence. Accordingly, this ground of revenue in ITA No.309/Bang/2018 is allowed.

27. Next ground in ITA No.309/ Bang/2018 is the issue of alleged undisclosed investment in site at Ramanahalli for ay 2008-09 of Rs. 1,19,03,500/-.

28. The AO made addition of Rs.1,19,03,500 being undisclosed investment at Ramanahalli based on digital evidence. This amount has been invested in purchasing a site at Ramanahalli, which is the farm house in which assessee is residing. One Mrs. Pallavi Ravi disclosed an amount of Rs.19,71,000 in her return of income as investment. Hence the balance amount of Rs.1,19,03,500 was added substantially in the hands of Smt. Pallavi Ravi and protectively in the hands of assessee.

29. The Id. DR submitted that if the addition in the hands of Smt. Pallavi Ravi is deleted, same to be confirmed in the hands of present assessee.

30. The Id. AR submitted as follows:-

- (i) It is an undisputed fact that the site at Ramanahalli does not belong to the assessee, but belongs to Smt.Pallavi Ravi, who is related to the assessee, who is also assessed to tax. The assessee happens to be staying at a residential house which is owned by Pallavi Ravi. The data, based on which this addition is made, is said to be found in this residence which belongs to Smt. Pallavi Ravi. The AO has made the addition substantially in the hands of Smt. Pallavi Ravi, in her assessment proceedings u/s 153C r.w.s 153A of the Act & has made the addition protectively in the hands of this assessee. The AO is not justified in bringing to tax the alleged undisclosed investment in site at Ramanahalli in the hands of the assessee under the facts and in the circumstances of

the case more so when it is an undisputed fact that the alleged impugned investment is not owned by him.

- (ii) The AO has made addition based on the contents of a CD seized during search proceedings conducted on 8<sup>th</sup> of June 2012 at the residence owned by Smt. Pallavi Ravi. The Assessee submits that the data in the said CD is not pertaining to him. Further there is no evidence which corroborates the veracity of the data found in the search. This addition, which is made based upon a dumb data, without any corroborative evidence, cannot stand the scrutiny of law & the CIT (A) has rightly deleted the addition made on this count in such of those assessment years in which the same was made.
- (iii) A prima-facie look at the data allegedly retrieved from the impugned CD clearly shows that the transactions mentioned therein are not belonging to any individual or business entity and it appears as though they are belonging to a political outfit or organization. The origin of this CD is not known to the Assessee. The Assessee reiterates that the said CD does not belong to him and nor does the data which it allegedly contains pertain to him.
- (iv) In view of the above facts & circumstances the Assessee states that the impugned addition deserves to be deleted in the interest of equity and justice.

31. We have heard both the parties and perused the record. In this case, there is a seized material in form of CD recovered from the assessee's place and it is the duty of assessee to explain the contents therein. However, the assessee failed to discharge the burden cast upon him.

32. On the other hand, the plea of the assessee is that there was no corroborative material in the hands of AO to make such addition. Also the addition is made in the hands of Smt. Pallavi Ravi substantively.

33. In our opinion, if the addition is sustained in the hands of Smt. Pallavi Ravi, there cannot be any addition in the hands of the assessee on this unexplained investment. The issue is required to be verified at the end of the AO whether there is any addition sustained in the hands of Smt. Pallavi Ravi and to decide thereupon. Accordingly, the issue is remitted to the AO for fresh consideration.

34. Next issue is regarding alleged unexplained cash deposits for AY 2008-09 of Rs. 74,59,500/-: The AO noticed huge cash deposits into the bank account of the assessee and sought explanation which are not satisfactory. As such addition was made. However, CIT(A) deleted the addition. Hence the revenue is in appeal before us. The Id. DR relied on the order of the AO on this issue.

35. The Id. AR submitted as follows:-

- (i) The CIT A has given a clear finding that as stated in the return of income and accepted by the AO in the assessment order, the Assessee has sold timber in cash to the tune of Rs.79,15,500/-, apart from having Contract receipts received in cash of Rs.11,20,000/- and JCB hire charges also received in cash to the extent of Rs.7,49,500/-. Thus, the gross receipts of the Assessee from these three sources itself is Rs.97,85,000/-, which is sufficient to explain the cash deposit of Rs.74,59,500/-.
- (ii) The CIT(A) has rightly deleted this addition based on undisputed facts.

36. We have heard both the parties and perused the record. The CIT(A) deleted the addition on the reason that assessee has shown income at Rs.97,85,000 and that is sufficient to deposit cash to bank account. In our opinion, on the basis of gross receipt, the addition cannot be deleted and he must have seen the cash/fund flow statement of assessee for the

relevant financial year before deleting the addition and accordingly we remit this issue to the file of AO with a direction to the assessee to explain the cash deposits in the bank account by producing the complete cash flow statement / fund flow statement for the relevant financial year. On that basis, the AO has to decide the issue afresh.

37. **For A.Y. 2009-10 addition of Rs. 74,59,500/-:** In this assessment year also, there is an addition on account of cash deposits into bank account. The Id.DR relied on the order of AO and prayed that issue may be remitted to the AO for fresh consideration. The Id. AR submitted as follows:-

- (i) The CIT (A) has given a clear finding that as stated in the return of Income and accepted by the AO in the assessment order, the Assessee has net agricultural Income of 7,75,000/- and gross agricultural receipts received in cash would be at least Rs. 38,75,000/-, apart from contract receipts received in cash to the extent of Rs. 1,05,07,277/- and JCB Hire Charges received in cash of Rs. 24,60,000/-. The opening cash balance as on 01-04-2008 was Rs. 16,64,700/-. Thus, the gross receipts of the Assessee, in cash, from these sources is Rs. 1,85,06,977/-. Accordingly, all deposits stand explained and the AO has not applied his mind on this issue but, has proceeded to add all deposits as income without considering the facts of the case.
- (ii) The CIT(A) has rightly deleted this addition based on undisputed facts.

38. We have heard both the parties. As discussed in AY 2008-09, this issue is remitted to the AO to examine the cash flow statement for the relevant financial year and decide accordingly as discussed in A.Y.2008-09

39. **For AY 2010-11 addition of Rs. 2,44,92,795/- :** In this assessment year also, there is an addition on account of cash deposits into bank account. The Id.DR relied on the order of AO and prayed that issue may

be remitted to the AO for fresh consideration. The Id. AR submitted as follows:-

- (i) The CIT A has given a clear finding that as stated in the return of Income and accepted by the AO in the assessment order, the Assessee has contract receipts of Rs.1,98,17,314/- in cash. Apart from this the Assessee has offered net agricultural Income of 8,75,000/- and gross agricultural receipts received in cash would be at least Rs. 43.75 Lakhs. These itself total to Rs. 2,41,42,934/-. Apart from the above there are opening cash on hand as well as realization of debtors etc. Thus, these receipts would be sufficient to explain the cash deposit made in the bank account of the assessee & no addition is called for on this account.
- (ii) The CIT A has rightly deleted this addition based on undisputed facts.

40. We have heard both the parties. As discussed in AY 2008-09, this issue is remitted to the AO to examine the cash flow statement for the relevant financial year.

41. **For AY 2011-12 addition of Rs.3,30,99,500/-:** In this assessment year also, there is an addition on account of cash deposits into bank account. The Id.DR relied on the order of AO and prayed that issue may be remitted to the AO for fresh consideration. The Id. AR submitted as follows:-

- (i) The CIT A has given a clear finding that as stated in the return of Income and accepted by the AO in the assessment order, the Assessee has contract receipts of Rs.7,89,82,286/- in cash. The Assessee has sale of Jelly to the extent of Rs. 2,69,88,168/- to third parties. These are sufficient to explain the cash deposit of Rs. 3,30,99,500/-.
- (ii) The CIT A has rightly deleted this addition based on undisputed facts.

42. We have heard both the parties. As discussed in AY 2008-09, this issue is remitted to the AO to examine the cash flow statement for the relevant financial year.

43. **For AY 2012-13 addition of Rs.82,64,280/-** : In this assessment year also, there is an addition on account of cash deposits into bank account. The Id.DR relied on the order of AO and prayed that issue may be remitted to the AO for fresh consideration. The Id. AR submitted as follows:-

- (i) The CIT A has given a clear finding that as stated in the return of Income and accepted by the AO in the assessment order, the Assessee has contract receipts of Rs.13,93,06,045/- in cash. The Assessee has sale of Jelly to the extent of Rs. 7,38,07,216/- to third parties. These are sufficient to explain the cash deposit of Rs. 82,64,280/-.
- (ii) Further, the Assessee has also earned income of Rs. 90,00,000/- from property dealings which he has offered to tax.
- (iii) These are sufficient to explain the cash deposit of Rs. 82,64,280/-.
- (iv) The CIT A has rightly deleted this addition based on undisputed facts.

44. We have heard both the parties. As discussed in AY 2008-09, this issue is remitted to the AO to examine the cash flow statement for the relevant financial year.

**UNDISCLOSED ELECTION RELATED RECEIPTS:**

45. The AO based on the data retrieved from CD found at the residence belonging to Smt. Pallavi Ravi, has brought the following amounts to tax

holding the same to be undisclosed election Receipts for the following Assessment Years:

<b>AY</b>	<b>Election Related Receipts</b>
2008-09	12,15,745
2009-10	2,55,91,960
2011-12	63,45,500
<b>Total</b>	<b>3,31,53,205</b>

46. In this regard, it is stated that the AO has made addition based on the alleged contents of a CD, allegedly seized during the search proceedings conducted on 8<sup>th</sup> of June 2012. The Assessee states that the data allegedly found in said CD is not pertaining to him. More importantly the Assessee is neither a politician and nor has he contested any election. So, the question of making any addition on this count does not arise. During the Assessment proceedings, the Assessee has already explained all the assets that he owns and the liabilities that he owes in totality. Therefore, the Assessee states that apart from the above stated assets and the liabilities he has nothing more to explain.

47. It is further submitted that a prima-facie look at the data allegedly retrieved from the impugned CD clearly shows that the transactions mentioned therein are not belonging to any individual or business entity and it appears as though they are belonging to a political outfit or organization. The origin of this CD is not known to the Assessee. The Assessee reiterates that the said CD does not belong to him and nor does the data, which it allegedly contains, pertains to him.

48. The Assessee has argued that all receipts do not constitute income in the hands of the person receiving the same and only such of those receipts on which he has absolute right of ownership and the right to deal with it in any manner that he wants to, without any restrictions or obligations attached to the same, would constitute income of such person.

49. The Assessee submits that in the event an extreme view is taken that the amounts are received by him, even then these receipts would not constitute his income as he had no right of ownership over these receipts and nor did he have the right to decide how these receipts are to be dealt with. In view of this serious limitation, the receipts will not become his income.

50. In view of the above submissions, the CIT(A) held that, it is a fact that the Assessee has not contested in any Election. There is no evidence to show that the impugned election receipts are received by the Assessee. It is no doubt true that the Assessee is closely related to Sri. C.T. Ravi, the Sitting MLA who contested the elections. The data may be pertaining to the said C.T. Ravi. The mere fact that the data retrieved from the residence of the Assessee cannot be the sole criteria for making the addition in the hands of the Assessee, more so when the residence is actually owned by Smt. Pallavi Ravi, wife of C.T. Ravi. There is no evidence at all to hold that amounts are received by the Assessee or that it is Undisclosed Income of the Assessee.

51. Further, it is apparent from the seized documents, that most of the receipts and payments do not pertain to the Assessee but others, who are either known to or related to Assessee and the AO proceeded to treated the same received by the Assessee which warrants further investigation in

as much as they constitute prima facie evidence of a possibility of there being Undisclosed Income, but In view of the decision of the Hon'ble Supreme Court in the case of V.C. Shukla, relied upon by the Assessee, the data contained in the said CD will not by itself constitute evidence to foist a liability on the Assessee. There is no corroborative evidence available on record to lend credence to the conclusion that the receipts which are taxed as Undisclosed election related receipts do in fact constitute the income of the Assessee. Accordingly, the CIT(A) concluded that the addition is not warranted and deleted the same accordingly.

52. The Assessee submits that a receipt becomes the Income of the Recipient only when the recipient has right of ownership over the said receipt and the right to deal with the same in any manner he so likes and not in any other case is not only logical but legally Correct. It is only the real income of a person that can be taxed, which postulates right of ownership as well as disposal. In the present case there is no evidence to show that Assessee has received the monies or that he is has the right of ownership or disposal.

53. The Id. DR relied on the order of the AO.

54. We have heard both the parties on this issue. The addition is made by AO on the basis of CD found in the premises of assessee. However, the CIT(A) placed reliance on the judgment of V.C. Shukla (supra) and deleted addition by passing very cryptic order. In our opinion, it is appropriate to remit the issue back to the file of AO to examine the issue in the light of each independent evidence brought on record by way of seized material and decide the issue afresh.

**UNEXPLAINED MISCELLANEOUS RECEIPTS OF RS.**  
**1,08,26,400/-**

55. The facts are that the AO in his assessment order while making this addition stated as follows:-

“The assessee is not merely into business activities but had been an associate to his relatives who are in politics and social activities. Thus in this way, the assessee received various amounts which are prima facie not business related, however since these amounts are appearing as part of assessee, these are basically receipts in the hands of assessee and the onus is on the assessee to explain the amounts received. One such account of income & outgoing amount, seized during the search in the case of assessee is hbs incoming and outgoing amounts from the laptop. These amounts were not received from people having business dealing with the persons, but may be officials, political persons etc.”

56. Thus on the basis of seized material, the very additions are made on this count in these assessment years.

57. The objection of the Id. DR is that the CIT(A) ought to have sustained the assessment order which are based on seized material.

58. The Id. AR submitted as follows:-

- (i) The AO is not justified in bringing to tax the alleged unexplained miscellaneous Receipts as mentioned below for the assessment years 2008-09 & 2009-10, which are not exigible to income-tax under the facts and in the circumstances of the Assessee's case.

<b>AY</b>	<b>Receipts (Rs.)</b>
2008-09	1,08,26,400
2009-10	1,75,00,000
<b>Total</b>	<b>2,83,26,400</b>

- (ii) In this regard, it is stated that the AO has made addition based on the alleged contents of a CD seized in the residence owned by Smt. Pallavi Ravi, during search proceedings conducted on 8<sup>th</sup> of June 2012. The Assessee states that the data allegedly found in said CD is not pertaining to him. The receipts and the payments mentioned therein are not belonging to him.
- (iii) A prima-facie look at the data allegedly retrieved from the impugned CD clearly shows that the transactions mentioned therein are not belonging to any individual or business entity and it appears as though they are belonging to a political outfit or organization. The Assessee states that he is not a part of any political movement. The origin of this CD is not known to the Assessee. The Assessee reiterates that the said CD does not belong to him and nor does the data which it allegedly contains pertains to him.
- (iv) The Assessee submits that all receipts do not constitute income in the hands of the person receiving the same and only such of those receipts on which he has absolute right of ownership and the right to deal with it in any manner that he wants to, without any restrictions or obligations attached to the same, would constitute income of such person.
- (v) The Assessee submits that in the event an extreme view is taken that the amounts are received by him, even then these receipts would not constitute his income as he had no right of ownership over these receipts and nor did he have the right to decide how these receipts are to be dealt with. In view of this serious limitation, the receipts will not become his income.
- (vi) The CIT(A) in view of the above submissions, held that from the seized documents that most of the receipts and payments do not pertain to this Assessee but others, who are either known to or related to him. The AO has fairly stated that the material prima facie is not business related but may pertain to certain officials and political persons. The AO has proceeded to treat the same as amounts received by the Assessee as the data is retrieved from a CD found in the

premises of the Assessee, which in fact is owned by Smt. Pallavi Ravi. This fact would at best warrant further investigation in as much as they constitute prima facie evidence of a possibility of there being undisclosed income but in view of the decision of the Hon'ble Supreme Court in the VC Shukla case, relied upon by the Assessee, the data contained in the said CD will not by itself constitute evidence to foist a liability on this Assessee. There is no corroborative evidence available on record to lend credence to the conclusion that the receipts which are taxed as unexplained miscellaneous receipts do in fact constitute the income of the Assessee.

- (vii) According to the CIT(A), as rightly pointed out by the Assessee, the data retrieved indicates that that the receipts mentioned therein to the extent of RS. 1,08,26,400 for AY 2008-09 & Rs.1 75,00,000/- for AY 2009-10 and income, if any, arising out of the same belong to a Partnership Firm called RN Developers which had two persons namely C.T. Ravi and Nagesh as its partners. The assessee is in no way connected to this partnership firm or its business.
- (viii) The contention of the Assessee that a Receipt becomes the Income of the recipient only when the recipient has right of ownership over the said receipt and the right to deal with the same in any manner he so likes and not in any other case is not only logical but also legally correct. In other words, it is only the Real Income of a person that can be taxed. Real income postulates right of ownership as well as right of disposal. In the present case, there is no evidence to show that the Assessee received the monies, much less having Right of Ownership and Right of Disposal over the same.

59. Accordingly, the CIT(A) in view of these circumstances and respectfully following the decision of the Apex Court in the VC Shukla case, deleted the addition made on this count.

60. We have heard both the parties on the issue. As discussed earlier, there should be independent seized material to sustain the addition. If there is only uncorroborative entry in the CD, it cannot be basis for addition.

The AO has to establish the live link between CD and other collateral evidence collected during the course of search action. Accordingly, the issue is remitted to the AO for fresh consideration and decision.

**DISALLOWANCE OF EXPENSES CLAIMED AS DEDUCTION  
U/S 57 OF RS. 83,95,493/- (AY 2008-09)**

61. The assessee carried out its timber business and as per return of income made a turnover of Rs.79,15,500, contract receipts of Rs.11.20 lakhs and also received JCB hire charges of Rs.7,49,500. Thus, the gross receipts of the assessee in the form of cash was Rs.97,85,000. He claimed expenditure of Rs.83,95,493 in earning income and offered net profit of Rs.7,54,657 after claiming depreciation of Rs.6,37,500. The AO in absence of proper vouchers and books of accounts, disallowed expenditure of Rs.83,95,493. The CIT(A) computed profit from this transaction @ 20% and restricted the addition to the tune of Rs.912,950 on this count and deleted addition of Rs.74,82,643. Against this, revenue is in appeal before us.

62. The Id. DR relied on the order of AO.

63. The Id. AR submitted as follows:-

- (i) The AO is not justified in disallowing the deduction of expenditures claimed of Rs.83,95,493/- u/s 57 of the Act under the facts and in the circumstances of the Assessee's case.
- (ii) It is submitted that during the F Y 2007-08 pertaining to the A Y 2008-09 the Assessee has carried out his timber business and has made a turnover of Rs. 97,85,000/- and has incurred an expenditure of Rs. 83,95,493/-, in this regard, towards purchase of timber, wages paid for felling the trees, loading, carting and transportation of the same etc. The Assessee has offered a sum of Rs. 7,54,657/-, by way of

profit to tax which he says is reasonable. He has offered Rs.6,70,250/- as profit from timber business which amounts to 8.46 % of the turnover.

- (iii) The Assessee has not maintained any books of accounts with regard to this business for the F Y 2008-09. In view of the facts that it is not possible to get bills, invoices and vouchers in this line of business. The Assessee deals with small and marginal coffee planters who are willing to sell the old shade trees in their plantations. And further the Appellant employs the local laborers for cutting, loading and carting purposes to whom on the spot payment in cash is made. And further he engages the transporter available on hand locally and makes the payment in cash.
- (iv) Therefore, in view of this it is not possible or feasible for the Assessee to maintain regular books of accounts in this regard. It should be noted that the Assessee has offered a sum of Rs. 7,54,657/-, by way of profit to tax which is reasonable in this line of business.
- (v) Therefore, in view of the above it is stated that the AO is not justified in disallowing the entire expenditure claimed of Rs.83,95,493/-, u/s 57 in the circumstances of the Assessee's case.
- (vi) Further the AO is not justified in holding that the Assessee has made a profit of the entire sum of Rs. 97,85,000/- (i.e. the total turnover itself) in his business of timber which is without any basis and only a hypothesis, conjecture and surmise.
- (vii) The CIT A has rightly decided this issue in favour of the Assessee.

64. We have heard both the parties on the issue. The CIT(A) estimated income @ 20% of the gross turnover which itself is very high as compared to the nature of business carried out by the assessee. Accordingly, we do not find any infirmity in the findings of CIT(A) and same is confirmed.

**ADDITION OF LOAN FROM K G RAJESH AS UNDER for AY 2008-09 & AY 2009-10**

65. The assessee has shown these loans in its statement of affairs. According to AO, assessee has not proved the receipt of this loan amount. The Id. DR submitted that the assessee has not proved the credit worthiness of the transaction and prayed that addition is to be sustained.

66. The Id. AR submitted as follows:-

- (i) The Assessee has shown in his statement of affairs for the year 31/03/2009 a loan Rs 11,20,000/- for AY 2008-09 & of Rs. 16,58,570/- for the AY 2009-10, received from one K G Rajesh. The AO stated in his assessment order that the Assessee did not prove the receipt of loan when asked to do so during assessment proceedings and added the same to the income of the Assessee.
- (ii) The Assessee submits that, that he has taken a loan of Rs. 16,58,570/- from one K G Rajesh, in order to purchase a JCB Vehicle for the purpose of his business, and the impugned loan is not denied by the lender either.
- (iii) The Assessee is having a continuous and regular business transaction with the said Shri. K G Rajesh for the past several years through proper banking channel. However, the AO has made the addition of the same erroneously ignoring the above facts.
- (iv) Further K G Rajesh has also disclosed this loan in his statement of affairs filed with the AO, who is also the AO for the said K.G. Rajesh. Ignoring the above facts, the AO made the addition erroneously.
- (v) The CIT(A) rightly deleted the above additions as not warranted.

67. We have heard both the parties on this issue. In this case, the CIT(A) observed that the lender is an income tax assessee and capacity to lend the money to assessee. Being so, there is no infirmity in the order of

CIT(A). The same is confirmed. This ground of appeal of the revenue in both the AYs is dismissed.

**DISALLOWANCE OF DEPRECIATION CLAIM on JCB (AY 2008-09 to 2012-13)**

68. The assessee claimed depreciation on JCB which was let out on hire. The assessee not able to produce the bills and the depreciation is denied. However, on appeal, the CIT(A) allowed depreciation by observing that assessee has let out the same on hire and offered income from same to tax. Against this revenue is in appeal before us.

69. The Id.DR submitted that assessee has to prove the ownership of JCB by producing valid invoices which he failed to do so, hence addition to be sustained.

70. The Id. AR submitted as follows:-

- (i) The AO is not justified in disallowing the depreciation claimed by the Assessee for the following Assessment years which is not disallowable under the facts and in the circumstances of the Assessee's case.

<b>AY</b>	<b>Amount</b>
2008-09	6,37,500
2009-10	11,57,798
2010-11	21,82,139
2011-12	64,11,813
2012-13	45,08,714
<b>Total</b>	<b>1,48,97,964</b>

- (ii) It is submitted that the Assessee has made an additions to the Fixed Assets and has claimed depreciation thereon and the bills and invoices in this regard were produced before the AO during the assessment proceedings. But the AO has ignored the same and has erroneously made the addition thereof.
- (iii) The CIT(A) has in the appellate proceedings, verified the bills of purchase and deleted the above additions as not warranted.
- (iv) Further the CIT A also upheld the contention of the assessee, that once income is determined as a percentage of turnover and in view of the additions made the rate of 8% of the business receipts, the question of disallowance of depreciation does not arise in as much as claim of depreciation is not made at all.

71. We have heard both the parties. IN all this four assessment years, i.e. 2009-10 to 2012-13, the assessee claimed depreciation without proving the ownership of the JCB. U/s. 32 of the Act, the assessee has to prove the ownership of the asset and usage of the same for the purpose of business. In the present case, assessee has not produced the valid invoices for purchase of JCB or registration documents. Accordingly, we remit this issue to the AO for fresh consideration.

**UNDISCLOSED INCOME FROM SALE OF PROPERTY:**

72. AY 2009-10: A sale agreement was seized as document No.A/HBS/09 page 36-43 during the course of search in the case of assessee. The agreement revealed that assessee has agreed to sell the lands measuring 5 acres 10 guntas located at Huliarahalli village for a total consideration of Rs.52.50 lakhs and received a sum of Rs.22,50,000 by cheque. The sale consideration was however shown as 7.5 lakhs in the registered sale deed. Hence the addition is made. However, CIT(A)

remitted the issue to the file of AO to verify whether asset sold is not a capital asset u/s. 2(14) of the Act, whether land is long term capital asset or not and allowance for cost and indexation if applicable. Against this, revenue is in appeal before us.

73. We have heard both the parties and perused the record. In this case, the CIT(A) only remitted the issue to AO for fresh consideration, though he has no power to remit the issue to the AO for fresh consideration. In our opinion, the issue has to be examined at the end of the AO. As such, he should have called for the remand report to decide himself. Instead of this, he remitted the issue to the AO for fresh consideration. We vacate that findings of CIT(A) and remit the issue to the file of AO for de novo consideration.

74. AY 2010-11 : The assessee sold a plot No.MP 8, KSSISC Industrial Area to one Nazeeruddin for Rs.7.50 lakhs vide sale deed dated 11.8.2009 which was not disclosed by the assessee to the department. Hence the AO made the addition. On appeal, the CIT(A) remitted the issue to the file of AO for which he has no power. Hence the department is in appeal before us. The Id. DR relied on the order of AO.

75. The Id. AR submitted as follows:-

- (i) The AO states that the Assessee has sold a special plot No.MP 8 (KSSISC Industrial Area) to on Nazeeruddin for Rs.7,50,000/- and has brought the entire sale consideration to tax as income from the sale. The Assessee has denied any knowledge of this transaction and is at a loss to understand how this addition is made. The AO has purportedly relied upon a registered sale deed dated 11/08/2009 in support of his addition. The same has however not been made available to the Assessee for his comments /rebuttal, which is opposed to principles of natural justice.

- (ii) The CIT(A) has erroneously held that, that apart from merely denying the transaction the Assessee has not done anything else to disprove the Sale Deed & thus proceeds to confirm the addition made by the AO. The Assessee submits that, when the Assessee has entered into transaction and the document of sale is not made available to the Assessee, the question of disproving the transaction does not arise.

76. We have heard both the parties and perused the record. In this case, the CIT(A) only remitted the issue to AO for fresh consideration, though he has no power to remit the issue to the AO for fresh consideration. In our opinion, the issue has to be examined at the end of the AO. As such, he should have called for the remand report to decide himself. Instead of this, he remitted the issue to the AO for fresh consideration. We vacate that findings of CIT(A) and remit the issue to the file of AO for de novo consideration.

### **UNDISCLOSED INVESTMENT IN LAND**

77. **AY 2009-10** : The AO during the assessment proceedings has recorded the statement u/s. 131 from various persons who has sold the land to the assessee for a total amount of Rs.61,08,000. The said persons stated that assessee has paid the above amount by cash. Hence the additions made. However, the CIT(A) deleted the deletion to the tune of Rs.45 lakhs and sustained addition of Rs.16.08 lakhs observing that assessee is having enough sources by way of sale of agricultural land. Against this revenue is in appeal before us.

78. The Id. DR relied on the order of AO.

79. The Id. AR submitted as follows:-

- (i) The AO is not justified in bringing to tax the alleged undisclosed investment in Land of Rs. 61,08,000/- under the facts and in the circumstances of the Assessee's case.
- (ii) The Assessee submits that the investments in question are fully accounted by the Assessee in his books of Accounts for a total sum of Rs.16,67,510/- being the actual investments in this regard and the sources for the same are fully explained by the Assessee before Income Tax Department.
- (iii) However, the AO based on certain statements recorded u/s 131 allegedly made by the persons who sold the impugned properties to the Assessee, made addition of a sum of Rs. 61,08,000/- to the income of the Assessee for the A.Y 2009-10 by way of undisclosed investments allegedly representing the unaccounted cash portion of the consideration paid in this regard.
- (iv) The Assessee states that he was not confronted with the above referred statements recorded u/s 131 at any point of time during the assessment proceedings to rebut the same with the correct facts in his possession.
- (v) The CIT(A) erroneously held that the additions made by the AO are based on an independent inquiry conducted by him and the sellers have confirmed on oath that they have received cash over and above what it recorded in the registered sale deed & has confirmed the addition made by the AO on this count.
- (vi) However, in view of the fact he confirmed the sale of agricultural land, the CIT(A) agreed with the contention of the assessee that the proceeds received therefrom to the extent not considered as hitherto disclosed i.e., 45,00,000/- is available for telescoping and will therefore reduce the unexplained investment made herein to that extent. He therefore restricted the addition by way of Unexplained Investments to Rs. Rs.16,08,000/- and delete the balance addition of Rs.45,00,000/-.

- (vii) In view of the fact that, he was not given an opportunity of cross examining the witnesses, which is in grave violation of principles of natural justice, the Assessee submits that the addition itself needs to be deleted.

80. We have heard both the parties and perused the record. In our opinion, on the basis of gross receipt from sale of agricultural land, the addition cannot be deleted and he must have seen the cash/fund flow statement of assessee for the relevant financial year before deleting the addition and accordingly we remit this issue to the file of AO with a direction to the assessee to explain the payment of sale proceeds to various parties by producing the complete cash flow statement / fund flow statement for the relevant financial year. On that basis, the AO has to decide the issue afresh.

81. For AY 2010-11 : The AO made addition towards investment in lands which are not reflected in the balance sheet at Rs.40.75 lakhs. However, CIT(A) though confirmed the addition in principle to the tune of Rs.33.25 lakhs, by giving a finding that telescoping benefit be given to the tune of Rs.7.50 lakhs. Against this, revenue is in appeal before us.

82. The Id. DR relied on the order of AO.

83. The Id. AR submitted as follows:-

- (i) The AO has held that the Assessee has invested a sum of Rs.40,75,000/- in lands in cash which are not reflected by him in his Balance Sheet. This addition was made based on a statement recorded on oath u/s 131 from the Vendor who admitted to having received this amount of Rs.40,75,000/- in cash over & above the documented price of Rs.9,25,000/-

- (ii) The CIT A relying on the statement recorded from the vendor confirmed the addition.
- (iii) However, he accepted the contention of the Assessee on the issue of telescoping the addition of Rs.7,50,000/- on the issue of sale of property to Nazeerudin which is discussed in Para H above, pertaining to the A.Y. 2010-11, against this addition of Rs. 40,75,000/- made by way undisclosed investments in property & restricted the addition to Rs.33,25,000/- by accepting the contention of the assessee that the sale proceeds of Rs.7,50,000/- was available for investment in purchasing the property involved in this issue.
- (iv) In view of the fact that the addition was made without the Assessee being afforded an opportunity to cross examine the Vendor, the same needs to be deleted.

84. We have heard both the parties and perused the record. In our opinion, on the basis of gross receipt, the addition cannot be deleted and he must have seen the cash/fund flow statement of assessee for the relevant financial year before deleting the addition and accordingly we remit this issue to the file of AO with a direction to the assessee to explain the investment by producing the complete cash flow statement / fund flow statement for the relevant financial year. On that basis, the AO has to decide the issue afresh.

**Unsubstantiated liability of Rs. 11,50,000/- for the AY 2009-10**

85. The assessee shown a liability of Rs.16.50 lakhs payable as on 31.3.2009 to Conc Shade Constructions Pvt. Ltd. As per balance sheet of that company, it was only Rs.5 lakhs. As such difference of Rs.11.50 lakhs brought to tax by AO.

86. The Id. DR relied on the order of AO.

87. The Id. AR submitted as follows:-

- (i) It is submitted that the AO is not justified in making the impugned addition on account of unsubstantiated liability of Rs. 11,50,000/- being the difference in the balance outstanding in the name of M/s. Conc Shade Constructions Pvt. Ltd., in the Assessee's books of account as on 31.3.2009 since the difference in balance between the books of the Assessee and the Conc Shade Constructions Pvt. Ltd., is on account of omission in the books of accounts of M/s Conc Shade Constructions Pvt. Ltd., in making certain entries therein by the concerned employee.
- (ii) The CIT(A) has confirmed the addition for the reason that the said amount of rs.1,15,000/- is not reflected in the financials filed by M/s Conc shade Constructions.

88. We have heard both the parties on the issue. In our opinion, the assessee has to reconcile the assessee account with Conc Shade Constructions P. Ltd. Accordingly the issue is remitted to the AO for fresh consideration.

**Undisclosed investment Residential house in Basavanahalli (AY 2010-11 to 2012-13)**

89. The AO based on seized material made these additions in 3 AYs for Rs.3,26,05,531. The CIT(A) deleted the addition by observing that the addition is only based on CD and there is no corroborative material. Against this, revenue is in appeal before us.

90. The Id. DR relied on the order of the AO.

91. The Id. AR submitted as follows:-

- (i) The AO is not justified in bringing to tax the alleged undisclosed investment in the residential house, situated in Basavanahalli Main road, Chikkamangaluru for the following

Assessment Years as mentioned below under the facts and in the circumstances of his case.

AY	Amount
2010-11	1,10,93,254
2011-12	1,78,28,445
2012-13	1,06,97,067
Total	3,96,18,766

- (ii) The Assessee categorically states that the residential house does not belong to him and nor has he spent any money on its construction. The addition is made purely based on suspicion and surmise.
- (iii) In this regard, it is stated that the AO has made addition based on the alleged contents of a CD allegedly seized during search proceedings conducted on 8th of June 2012. The Assessee states that the data allegedly found in said CD is not pertaining to him.
- (iv) The AO has erroneously added the impugned above investments in his hand for the above AYs and taxed it protectively. Further the impugned undisclosed investment is taxed substantively in the hands of Shri. C T Ravi, and the same is again taxed protectively, also in the hands of M/s Conc Shade Constructions Private Limited, in which the Assessee is a Managing Director.
- (v) The CIT(A) held that from the seized documents that most of the receipts and payments do not pertain to this Assessee, but to others, who are either known to or related to him. The AO has proceeded to treat the same as amounts spent by the Assessee as the data is retrieved from a CD found in the premises of the Assessee. This fact certainly warrants further investigation in as much as they constitute prima facie evidence of a possibility of there being undisclosed income but in view of the decision of the Hon'ble Supreme Court in

the VC Shukla case, relied upon by the Assessee, the data contained in the said CD with not by itself constitute evidence to foist a liability on this Assessee.

- (vi) The CIT(A) has rightly concluded that the addition, though made protectively, is not warranted based on the facts and circumstances of this case and deleted the same accordingly.

92. We have heard both the parties and perused the material on record. The CIT(A) deleted addition in wholesome manner by passing cryptic order without going through the actual seized material. In our opinion, the issue to be examined by AO by co-relating the seized material to the investment made by the assessee in the residential house in Basavanahalli. Accordingly, in all these 3 AYs, the issue is remitted to the AO for fresh consideration.

**THE ISSUE OF ALLEGED INCOME OF RS.3,12,84,946/- ARISING OUT OF THE UNDISCLOSED SALE OF THE STONE CRUSHER UNIT AND HOT MIX UNIT FOR THE AY 2011-12.**

93. The assessee declared total turnover of the stone crusher at Rs.3,68,40,668 and declared a net profit of Rs.31,12,980. The AO has suspected that actual turnover is Rs.7,81,77,105 as against declared turnover by assessee. The AO estimated profit at 44% and computed net profit at Rs.3,43,97,926 and reduced the amount of Rs.31,12,980 returned by the assessee and made net addition of Rs.3,12,84,946. However, CIT(A) deleted addition on the reason that there is no concrete proof of undisclosed turnover disclosed during search. The entire estimate is based on daily movement register which is a record of movement of tar mixed jelly and pure jelly. Tar mixed jelly is used in the business of Conc Shade Constructions P. Ltd. as raw material in its business of laying roads. The sale of Deveerama stone crushers is confined to pure jelly and not for mixed jelly. Hence any value which is attributed to movement of tar mixed jelly will not become turnover of the stone crushing unit and cannot be

treated as its undisclosed turnover. Further, the turnover as determined by the AO cannot be achieved considering the capacity of the plant and the turnover as per books of assessee appears realistic and practical. AO has also not right in bringing the alleged turnover to tax and ought to have brought only the gross profit applicable to the same to tax. Further the estimate of net profit @ 40% appears to be unreasonable. Accordingly he deleted the addition. Against this, revenue is in appeal before us.

94. The Id. DR submitted that CIT(A) given a finding that only gross profit to be brought to tax. However, he deleted the entire addition.

95. The Id. AR submitted as follows:-

- (i) The AO is not justified in bringing to tax the alleged undisclosed income of Rs.3,12,84,946/- under the facts and in the circumstances of the Assessee's case.
- (ii) The Assessee submits that the total turnover of the Stone Crusher is only Rs.3,68,40,668/- and has declared a net profit of Rs.31,12,980/-. The AO has suspected that the actual turnover is 7,81,77,105/- as against Rs.3,68,40,668/- disclosed by the Assessee and has estimated the net profit from the business at 44% of the turnover and has arrived at a total net profit of Rs.3,43,97,926 /- and reduced the amount of Rs.31,12,980/- returned by the Assessee from the same and made a net addition of Rs.3,12,84,946/- to the income of the Assessee.
- (iii) The Assessee is in the business of Asphaltting of roads. He is also in the business of stone crushing in the name of Shree Deveeramma Stone Crushers, where the stones are crushed to manufacture the jellies of different shapes and sizes required in asphaltting the roads.
- (iv) The Assessee is owning a tar (Bitumen) mixing unit where the process of mixing of the hot molten tar with the jelly stone is carried out. It needs to be noted that Shree

Deveeramma Stone Crushers does not carry on the tar mixing business, it has restricted itself to stone crushing only.

- (v) It is now alleged by the AO that the Assessee has not offered the income to tax with regard to the sale of Rs. 7,81,77,105/- carried on by Shree Deveeramma Stone Crushers during the financial year 2010-11 pertaining to the Assessment year 2011-12, based on the digital data that was seized during a survey operation conducted in the premises of crusher unit on 08.06.2012.
- (vi) In this regard it is stated that the digital data that was found at the stone crusher premises is not the books of Account maintained by the Assessee with regard to his stone crushing business. A prima facie look, at the impugned digital data reveals that it is not any accounting data but was only the data of movement of tar mixed jelly and unmixed jelly from the crusher unit to the spot where the asphaltting was carried out. The data was recorded by the in-charge at the crushing unit just in order to have control over the quantum of stock of jelly and the tar used for mixing with jelly. It should be noted here that he is not a trained Accountant and further one simply cannot maintain books of Account in a jelly crushing unit which is about 20 Kms away from the town of Chikmagalur. Further it is a known fact that the accounts are generally maintained at the administrative office of a business. Tar is purchased by the Assessee in his personal name. The tar mixing machine is erected in the very premises where the stone crushing unit is situated.
- (vii) The in-charge of the stone crushing unit has been instructed by the Assessee to maintain the data of movement of jelly & jelly mixed with tar in terms of quantity and rate w.r.t each of the loads leaving the premises of the stone crusher unit, which has been promptly followed verbatim by the unit in-charge.
- (viii) Further it is stated that Shree Deveeramma Stone Crushers is involved mainly in the business of stone crushing. During the F.Y. 2010-11, the Shree Deveeramma Stone Crushers has

made a Turnover of Rs. 3,68,40,668/- as against the alleged sale of Rs. 7,81,77,105/-, and the net profit of Rs. 31,12,980/- has been duly offered to tax.

- (ix) However, the AO has inferred from the seized data the Shree Deveeramma Stone Crushers has made a total sale of Rs. 7,81,77,105/- out of which the sale made to the to certain other parties is Rs. 1,55,82,681/- and the balance Rs. 6,25,94,424/- is in the name of Conc Shade Constructions Private Limited, for the financial year ended 31.03.2011. However, the actual sale made to them during the impugned period is Rs. 2,69,88,168/- and Rs. 98,52,500/- respectively.
- (x) This difference between the actual sales and the alleged sales is actually represented by the tar component erroneously included in the alleged sale recorded by the Unit in-charge. If the tar component purchased in the names of the Assessee, Conc Shade Constructions Private Limited and Shree Deveeramma Stone Crushers is eliminated the resultant figure approximates to the actual sales of Shree Deveeramma Stone Crushers.
- (xi) In this regard it is further stated that the Assessee owned during the FY 2010-11 the least capacity machinery, which was capable of achieving a maximum production of 25 tons per hour.
- (xii) The Assessee operated 2 shifts of 8 hours each. Therefore, the maximum production that could be achieved was 25 tons X16 times= 400 Tons per day. The average rate per ton of Jelly produced is Rs.425/-. At this rate the maximum sale the unit was capable of achieving was Rs.6,20,50,000/- assuming that the unit worked throughout the year all 365 days.
- (xiii) However, it may be seen from the seized digital data itself that there is no uniform sales throughout the year. Therefore, it may be safely assumed that the plant is capable of running at the capacity of only about 70% ie.,0.7 X 365 (Days) X 25 (tones) X 16 (Hours) X 425 (Rs.) = 4,34,35,000/- during the FY 2010-11 the plant worked only for the 10 Months

$$\frac{\text{Rs.4,34,35,000}}{12} \times 10 = 3,61,95,850/-$$

- (xiv) It needs to be noted that the Assessee has shown a sale of Rs.3,68,40,668/- which is higher than the probable sale of Rs.3,61,95,850/- as arrived above.
- (xv) Another important point for consideration is that M/s Conc Shade Constructions has in its Profit & Loss account accounted Purchase of Jelly to the extent of Rs 96,52,500/- for the y.e 31/03/2011 which is also the sale reflected in the books of the stone crusher unit maintained by the Assessee. In the event the sale as perceived by the AO is adopted then the purchase in the hands of Conc Shade Constructions should also go up. In a way, suppression of turnover, if any, is revenue neutral as the same is not treated as expenditure in the hands of the buyer, a company in which the Assessee is substantially interested.
- (xvi) Therefore, it is evident under the facts and circumstances of the Assessee's case it was not possible for him to have made a sale of Rs.7,81,77,105/- during the FY 2010-11.
- (xvii) Without Prejudice the AO has estimated the net profit at 44% of turnover, which is not only excessively high and unheard of in this line of trade but also bad in law in the absence of Rejection of Books of accounts maintained by the Assessee.
- (xviii) In view of the above submissions the CIT(A), held that the additions made by the AO are not based on any concrete proof of undisclosed turnover discovered during search. The entire estimate is based on jelly movement register which is a record of movement of tar mixed jelly and pure jelly.
- (xix) Tar mixed jelly is used in the business of Conc Shade Constructions (P) Ltd as a raw material in its business of laying roads. The sales of Deveerama stone crushers is confined to pure jelly and not tar mixed jelly. Hence any value which is attributed to movement of tar mixed jelly will not become turnover of the stone crushing unit and cannot be treated as its undisclosed turnover.

(xx) Further the turnover as concluded by the AO cannot be achieved considering the capacity of the plant and the turnover as per the books of the Assessee appears. realistic and practical. The AO is also not right in bringing the alleged turnover to tax and ought to have brought only the Gross Profit applicable to the same to tax.

(xxi) Further the estimate of Net Profit @ 44% appears to be highly unreasonable and not supported by any comparative cases in the same line of business.

(xxii) The decision of the CIT A to delete this addition is based on the facts of the case & does not need any interference. On the contrary the addition made by the AO is not based on factual circumstances but is one which purely based on suspicion.

96. We have heard both the parties and perused the material on record. The CIT(A) deleted the addition only on the proposition that jelly movement register is a record for movement of tar mixed jelly and pure jelly. Tar mixed jelly is used in the business of sister concern, Conc Shade Constructions P. Ltd. There is no basis for such conclusion and also his finding is contradictory in nature as he observed that only gross profit to be taxed in A.Y. 2008-09. However, in the A.Y. 2011-12 he deleted the addition. Hence, we vacate his findings and remit the issue to the file of AO with a direction to assessee to establish how the undisclosed turnover is not relating to his business and it is disclosed in the books of accounts of sister concern. Thereafter the AO has to decide the issue accordingly.

**Profits from contract receipts of Rs. 11,16,614/- for the AY 2011-12 & RS. 20,56,458/- for AY 2012-13:**

97. The AO mentioned in his order that assessee did not produce books of account and relevant vouchers in support of income declared from his contract business. Hence he estimated income from contract business @ 8% of turnover and made addition on this count. The CIT(A) observed that

addition of 8% is unreasonable and this addition by way of estimation of income was done protectively by AO in view of his disallowing depreciation and unexplained liabilities which is not proper and he should have been the other way around with income being estimated substantively and depreciation and other liabilities disallowed on a protective basis. He however confirmed the addition based on estimation of income on substantive basis.

98. The Id.DR submitted that CIT(A) is not correct in allowing depreciation on the ground that income has been estimated though ownership of assets not proved.

99. The Id. AR submitted as follows:-

- (i) The Assessee has maintained the books of account and other documents as mandated by the provisions of the Income tax Act 1961 during the F.Y 2009-10, pertaining to the A.Y.2010-11. Further these books of accounts are duly audited under the provisions of section 44AB of the Income tax Act, 1961, further the said Audit Report has not been rejected by the Income tax Department.
- (ii) The facts borne on the records of the Income tax Department prove that the Assessee has voluntarily produced the audited cash book, bank book, bank statement etc., during the impugned assessment proceedings.
- (iii) In view of the above for AY 2011-12, it is stated that the AO is not justified in ignoring the taxable income offered to tax of Rs. 52,01,968/- and estimating the income of the Assessee at Rs. 63,18,583/- being the 8% of the contract receipts of Rs.7,89,82,286/- u/s 44AD of the Income Tax Act 1961, despite the duly audited books of account being present.
- (iv) For AY 2012-13, it is stated that the AO is not justified in ignoring the taxable income offered to tax of Rs. 90,88,025/- and estimating the income of the Assessee at Rs. 1,11,44,484/- being 8% of the contract receipts of

Rs.13,93,06,045/- u/s 44AD of the Income Tax Act 1961, despite the duly audited books of account being present.

- (v) The CIT A confirmed the addition substantively, as against the protective addition made by the AO. This decision of the CIT A in confirming the addition substantively has been accepted by the Revenue.

100. We have heard both the parties. The plea of the assessee is that the assessee is maintaining regular books of accounts and it was subject to audit u/s 44AB of the Act. In view of this, the assessee's income has to be computed as per books of accounts subject to verification. Further, the assessee is entitled for depreciation on assets if the conditions laid down u/s 32 of the Act were satisfied. Accordingly, this issue is remitted to AO for fresh consideration in accordance with law.

**Unconfirmed liability of Rs. 2,36,20,498/- for AY 2011-12**

101. The AO on going through the balance sheet of assessee as on 31.3.2011 has added entire amount of current liabilities as on 31.3.2011 at Rs.2,36,20,498. However, CIT(A) deleted the addition holding that the income has been estimated @ 8% on a substantive basis.

102. The Id. DR submitted that assessee has not produced the books of account, liabilities to be substantiated.

103. The Id. AR submitted as follows:-

- (i) The AO on going through the Balance sheet of the Assessee as on 31/03/2011, has added the entire amount of Current liabilities as on 31/03/2011 of Rs. 2,36,20,498/- holding the same to be unsubstantiated for want of confirmations from the concerned creditors.
- (ii) The Assessee submits that the table given below gives the breakup of the current liabilities payable as on 31.03.2011

and the particulars thereof. It needs to be borne in mind that out of the outstanding balance the sum of Rs. 72,86,970/- (Rs. 88,86,970 - Rs. 16,00,000) is opening balance which does not pertain to the impugned Assessment Year. The Assessee also states that each of the balance outstanding is pertaining to the Assessee's regular business, genuine and capable of being confirmed.

- (iii) Be it as it may In view of the fact that the CIT(A) upheld the determination of income @ 8% of the total turnover, he deleted this addition on the ground that when the books are rejected & income is estimated as a percentage of turnover, no addition can be made by holding certain liabilities as unexplained. The decision of the CIT A is in consonance with his decision to uphold the estimation of income.

104. We have heard both the parties on the issue. The main grievance of the department is that assessee has not produced the books of account so as to compute the income. In our opinion, the issue to be examined by AO after going through books of account. Accordingly issue is remitted to AO with a direction to assessee to produce books of accounts. Thereafter AO has to decide the issue afresh in accordance with law.

**Unexplained expenses of Rs. 82,74,159/- for AY 2011-12**

105. The AO had made addition of Rs.82,74,159 under the head 'expenses payable' on the reason that there is no confirmation from the concerned parties. The CIT(A) deleted it on the reason that it has been already included in the addition made under the head 'sundry payables' and also income has been estimated by the AO. Against this, revenue is in appeal before us.

106. The Id. DR relied on the order of AO.

107. The Id. AR submitted as follows:-

- (i) The AO has added a sum of Rs. 82,74,159/- shown under the head Expenses Payable holding the same to be unsubstantiated for want of confirmations from the concerned creditors.
- (ii) Be it as it may in view of the fact that the CIT(A) upheld the determination of income @ 8% of the total turnover, he deleted this addition on the ground that when the books are rejected & income is estimated as a percentage of turnover, no addition can be made by holding certain liabilities as unexplained. The decision of the CIT(A) is in consonance with his decision to uphold the estimation of income.

108. We have heard both the parties on the issue. The main grievance of the department is that assessee has not produced the books of account so as to compute the income. In our opinion, the issue to be examined by AO after going through books of account. Accordingly issue is remitted to AO with a direction to assessee to produce books of accounts. Thereafter AO has to decide the issue afresh in accordance with law and there cannot be any double addition one as sundry payables and other as sundry creditors.

**UNDISCLOSED LOAN ADVANCE OF RS. 2,44,71,632/- (AY 2012-13)**

109. The AO relying solely upon the contents of an excel Sheet to make the addition. The CIT(A) held that the addition is not made based on evidence which will stand the test of law & deleted the same in the absence of corroborative evidence in support of the same. Further in view of the fact that he had confirmed the addition made to Income from business @ 8% of turnover on a substantive basis, the CIT(A) deleted this addition on this count too.

110. The Id. DR relied on the order of AO.

111. The Id. AR submitted that it is not clear from the excel sheet itself as to what those amounts represent. There are no details as to purpose of the amounts mentioned therein. No enquiry is made about these transactions.

112. We have heard both the parties. The addition is deleted by CIT(A) there is no corroborative evidence to support the addition. However, this finding is not based on the examination of the seized material. The AO has to examine the parties concerned and confront the same to the assessee. Thereafter he shall decide the issue afresh in accordance with law. Accordingly the issue is remitted to AO for fresh consideration.

**CASH DEPOSITS IN THE NAME OF BENAMIS' OF RS. 2,91,10,520/- FOR AY 2012-13**

113. The AO based on post search enquiries in the case of the Assessee, has made an addition of Rs. 2,91,10,520/- which represents cash deposits made in the account bearing No.91120057423983 with M/s Axis Bank Ltd, Chikamagalur, standing in the name of one Devaraju, an employee of the Assessee. the CIT(A) held that the submissions of the Assessee being factually correct and the transactions pertaining to the impugned bank account being duly accounted in the books of the Assessee and income therefrom offered to tax, the deposits made therein are also explained. Against this revenue is in appeal before us.

114. The Id. DR relied on the order of AO.

115. The Id. AR submitted as follows:-

- (i) The Assessee submits that the addition cannot be made u/s 153 A on this count as the AO himself admits that the same was found in post search enquiries.
- (ii) With regard to the above issue the Assessee states that the impugned bank account bearing No.911020057423983 with

Axis Bank, Chikkamagaluru in fact belongs to him, it was however operated in the name of one of his employees by name Shri. Devaraju. This was done in order to purchase Tar (Bitumen) required by the Assessee's business at a cheaper rate from the unorganized market.

- (iii) The cash generated in the Assessee's business was withdrawn and deposited in the impugned bank account, which in turn was paid to the Bitumen supplier companies through RTGS. This fact is evidenced by the very bank statement.
- (iv) It is an undisputed fact that the assessee has duly accounted the transactions in his own books of account & offered the income from the same to tax.

116. We have heard both the parties and perused the record. The CIT(A) deleted the addition on the basis of submission of assessee without calling for comments from the AO. In our opinion, it is appropriate to remit the issue to AO to examine the books of account along with the bank account and decide the issue accordingly.

**UNDISCLOSED CONTRACT RECEIPTS OF RS. 15,68,725/- FOR AY 2012-13**

117. The AO on noticing a difference in the Contract Receipts as per P&L account filed and the receipts as per Form 26AS in as much as the receipts as per P&L a/c are lesser than the receipt as per Form 26AS by Rs.15,68,725/- added the same to the income of the Assessee.

118. The Id. AR submitted that the correct amount of Contract Receipts of the Assessee for the F.Y 2011-12 pertaining to the A.Y 2012-13 is Rs. 13,93,06,0451 which is also disclosed in the in the Profit & Loss A/c. The Contract Receipts as per Form 26 AS is Rs. 14,08,74,770/-. This same is based on:-

- (i) The Contract awarded documents

- (ii) The form No. 16A issued by the various customers of the Assessee in respect of the works contract carried on by him during the F.Y. 2011-12 pertaining to the A.Y. 2012-13.
- (iii) On the basis of the acknowledgement given by the customers of the Assessee in respect of the Vat deducted at source (Form No. 156) for the F.Y. 2011-12.
- (iv) The various bank statements of the Assessee for the F.Y. 2011-12.

119. The Id. AR further stated as follows:0

- (i) The Assessee states that the difference between the figures as evidenced by the hard copy of the Form No. 16A issued by the customers of the Assessee & the Form No. 26AS is an account of the late uploading of details by officials of the Public Works Department of the State Government and the Assessee not being aware of the same at the time of filing return of income.
- (ii) Without Prejudice, the AO has erred in bringing the entire difference to tax and should have restricted the addition to 8% of the difference amount of Rs.15,68,725/- as he himself does so in taxing the contract receipt as per books of Rs.13,93,06,045/- in making the assessment order. Further the Assessee has made a short claim of credit of TDS of Rs.3,88,601/- and the same may be given credit as TDS paid if found to be correct. The TDS as per Form 26 AS is Rs.22,15,792/- and the TDS credit claimed by the Assessee in his return of income is Rs.18,27,191/-, the shortfall in claim being Rs.3,88,601/-. This amount was missed out as the Assessee was not aware of the same. The Assessee filed his return on 14/10/2014 and the Zilla Panchayat PRE Division, Chikkamagalur, uploaded the same on 24/10/2014. Hence the discrepancy.
- (iii) Without Prejudice, the AO has erred in bringing the entire difference to tax and should have restricted the addition to 8% of the difference amount of Rs.15,68,725/- as he

himself does so in taxing the contract receipt as per books of Rs.13,93,06,045/- in making the assessment order.

- (iv) the CIT(A) has held that, it is a fact that the amount of Rs. 15,68,725/- has not been included in the turnover. He however held that the AO has to tax the same at 8% thereof in as much as the entire turnover cannot be considered as profit. The CIT A confirmed the addition to the extent of Rs.1,25,498/- and delete the balance addition of Rs.14,43,227/-. The AO was also directed to give balance of credit of TDS of Rs.3,88,601/-, in the event the Assessee is found to have not actually claimed the same in his returns.

120. We have heard both the parties. The CIT(A) in certain years estimated income @ 20% and in this AY he estimated 8% which are contradictory. In our opinion, to meet the ends of justice, it is appropriate to remit the issue to the file of AO to decide the issue after examining books of accounts.

**Unconfirmed liabilities of Rs. 7,95,50,099/- for AY 2012-13**

121. The AO on going through the Balance sheet of the Assessee as on 31/03/2012, has added the entire amount of Current liabilities as on 31/03/2012 of Rs. 7,95,50,099/, holding the same to be unsubstantiated for want of confirmations from the concerned creditors.

122. The CIT(A) upheld the determination of income @ 8% of the total turnover, he deleted this addition on the ground that when the books are rejected & income is estimated as a percentage of turnover, no addition can be made by holding certain liabilities as unexplained. The decision of the CIT A is in consonance with his decision to uphold the estimation of income.

123. We have heard both the parties. As discussed in AY 2011-12, this issue is remitted to AO for fresh consideration.

**UNDISCLOSED INVESTMENTS IN LAND IN THE NAME OF SPOUSE OF RS. 24,09,135/- FOR AY 2012-13**

124. The AO based on certain materials alleged to have been seized during the course of search (A/HBS/10, Pages 20 to 23) has concluded that the actual consideration paid is Rs.29,00,000/- and thus made the addition of a sum of Rs. 24,09,135/- to the income of the Assessee by way of undisclosed investments.

125. The Id. AR submitted that the investments in question are fully accounted by the Assessee in his books of Accounts for a total sum of Rs.4,90,865/- being the actual investments in this regard and the sources for the same are fully explained by the Assessee before Income Tax Department. Further the Assessee was not given a copy of alleged seized material at any point of time during the assessment proceedings to rebut the same with the correct facts in his possession.

126. It is further submitted that the CIT(A) has erroneously, held that Assessee has failed to explain the seized material satisfactorily, whereas no copy of seize material was given to the Assessee during the Assessment proceedings and has also held that the Assessee has offered no credible explanation as to why he has not accounted the difference amount of Rs.24,09,135/. In view of the fact that the evidence was not put forth to the assessee for rebuttal, the addition, which is made, without reasonable opportunity being afforded to the assessee, needs to be deleted.

127. We have heard both the parties. In our opinion, it is appropriate to remit the issue to AO to give an opportunity to the assessee to rebut the evidence collected by the department for making such addition. Accordingly, this issue is remitted to the AO for fresh consideration.

**UNDISCLOSED INVESTMENT WITH CD ANIL KUMAR OF RS. 1,05,82,000/- FOR AY 2012-13**

128. The AO has in the assessment order stated that one Sri.C D Anil Kumar was covered under the search conducted on this Assessee and also one M/s Bhargava Associates, deed writers, were also covered. Several agreements entered into by Anil Kumar for purchase of properties came to light while covering Bhargava Associates. Anil Kumar on being questioned about these agreements has stated that he hid not purchase some of those properties and instead they were. purchased by Tejaswini Sudarshan, w/o the Assessee. He has further stated that the advance for these properties to make advances while entering into agreements with those parties were made out of monies received from this Assessee. The AO has then come to infer that the Assessee had a modus operandi where he would enter into agreements thro Anil Kumar and finally purchase the property by a sale deed made directly from the concerned vendor. The AO has thus made the addition of advances made by Anil Kumar, said to have been received from the Assessee to the tune of Rs.1,05,82,000/- as Undisclosed investment made with Anil Kumar.

129. In this regard it is stated that the AO has made the impugned addition of Rs. 1,05,82,000/- based on alleged evidence which do not form part of seized material and alleged to have been found with a third party, not connected to the Assessee.

130. The addition made cannot be made u/s 153 A in as much the same is not forming part of any seized material. Further if it is gathered during the

course of search conducted on another person, the same could only be added in a proceeding u/s 153C initiated separately in accordance with law and not under the present proceeding u/s 153 A. The AO is not justified in making this addition based on oral statement made by Anil Kumar, which has no evidentiary value, and which is not corroborated by any other evidence. The statement is a self-serving statement made by Anil Kumar and cannot be used to make an addition in the hands of the Assessee in the absence of any supporting and corroborating evidence.

131. In view of the above, the CIT(A) held that the addition is not made based on evidence which will stand the test of law. The AO has merely relied upon a self-serving statement made by Anil Kumar and in the absence of corroborative evidence in support of the statement, which appears to be purely self-serving in nature and rightly deleted the said addition of Rs.1,05,82,000/-.

132. The Assessee submits that the data allegedly found in the CD cannot be relied upon solely in order to make an addition to the income of the Assessee and that it is absolutely necessary to have corroborative evidence in order to make an addition.

133. From the decision of the Supreme Court in the V.C. Shukla case, it is clear that in the case of the Assessee that the allegedly retrieved data from a CD allegedly found during the course of search does not constitute books of accounts regularly maintained by the Assessee and further more importantly, in the absence of any corroborative evidence, which is essential, the same cannot be said to represent the transactions pertaining to the Assessee much less undisclosed income of the Assessee and no addition can be made based on the same.

134. The Assessee has been maintaining regular books of accounts and all the authentic/genuine transactions have been duly incorporated therein. The Assessee is at a loss to understand how entries in a CD which do not relate to his transactions at all can be the basis for making an addition to the income of the Assessee. Since the CD was found in the place where the Assessee resides casts a suspicion that the contents therein could possibly indicate income but by itself will not be conclusive in nature in the absence of corroborative evidence. It is for the reason that there is no corroborative evidence to substantiate the authenticity of the data, which is contained in the CD, that the same, cannot be accepted as incriminating in nature, representing undisclosed income. Further it is also important to note that the said retrieval of the data from the CD was not by the department in the presence of the Assessee which gives rise to question about the veracity of the data which is alleged to have been retrieved from the CD.

135. It is further submitted that the learned assessing officer has made the additions without any independent confirmation about the receipts or payments as contained in the said CD and any addition made in absence of the same amounts to grave violation of principles of natural justice.

136. It is important to take note of the fact that the Assessee is staying in a house not owned by him but by his relative Smt.Pallavi Ravi, whose husband C.T.Ravi, is a Member of the Legislative Assembly of the State of Karnataka.

137. In view of the above the Assessee state the additions made in this regard in his hands be deleted in the interest of equity and justice.

138. The assessee relies upon the decision of this Bench in the case of Sri. Devaraj Urs Educational Trust vs ACIT Central Circle Bangalore in ITA

NO's. 500 to 506 by order dated 16/08/2021, wherein this Hon'ble Tribunal held that additions cannot be made merely based on data found at the time of search in the absence of corroborative evidence. In the case on hand there is no single evidence in support of the addition.

139. We have heard both the parties on the issue. We remit the issue to the file of AO to confront the evidence collected by him to the assessee. Thereafter, he has to decide the issue afresh. Ordered accordingly.

140. In the result, all the assessee's appeals are dismissed and revenue's appeals are partly allowed for statistical purposes.

Pronounced in the open court on this 20<sup>th</sup> day of April, 2022.

Sd/-

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

( CHANDRA POOJARI )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 20<sup>th</sup> April, 2022.

*Desai S Murthy /VG*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.