

**| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**&**

**SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 492/Kol/2021**

**Assessment Year: 2018-19**

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| <b>Atul Tantia</b><br>JC-25, GPT Centre<br>Sector-III<br>Salt Lake City<br>Kolkata - 700098<br><b>[PAN : ABMPT7504K]</b> | <b>Vs</b> | <b>Deputy Commissioner of<br/>Income Tax - Central Circle -<br/>3(1), Kolkata</b> |
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| <b>अपीलार्थी/ (Appellant)</b> |  | <b>प्रत्यर्थी/ (Respondent)</b> |
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|---------------|--|
| Assessee by : | Shri A.K. Tibrewal, A/R and Shri Amit Agarwal, A/R |
| Revenue by :  | Shri Subhrajyoti Bhattacharjee, CIT, D/R           |

सुनवाई की तारीख/Date of Hearing : 22/03/2023  
घोषणा की तारीख /Date of Pronouncement: 28/03/2023

**आदेश/ORDER**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER :**

This is the appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - 21, Kolkata (hereinafter referred to as the Ld. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 16/09/2021 for the Assessment Year 2018-19.

2. The only issues raised before us is against the confirmation of addition of Rs.20,00,000/- by the ld. CIT(A) as made by the Assessing Officer u/s 69A of the Act in respect of unexplained money.

3. Facts in brief are that, the assessee filed return of income on 31/08/2018 declaring total income of Rs.58,45,250/- after claiming deduction under chapter VIA of Rs.4,60,000/-. A search and seizure u/s 132 of the Act was conducted on 12/09/2017 on GPT Group of cases including

the assessee. During the course of search and seizure, mobile data was retrieved and printout of SMS were taken out from the mobile of Shri Atul Tantia. As per the mobile messages, unaccounted cash transactions were carried out between concerns of GPT Group and others. The SMS and WhatsApp printouts were suggestive of instructions of Shri Shivratn Sharma and Shri Atul Tantia. Thereafter, statements were recorded of Shri Atul Tantia, in which he never admitted that the money either belonged to him or exchanged hands at his instructions. The Assessing Officer finally added the same to the income of the assessee as undisclosed income u/s 68 of the Act as the assessee did not offer any plausible explanation in the assessment framed u/s 143(3) of the Act dt. 30/12/2019.

3.1. Aggrieved the assessee carried the matter before the Id. First Appellate Authority. The Id. CIT(A) confirmed the addition by holding as under:-

*“4.2. I have perused the submission of the assessee, assessment order and case laws relied upon by the assessee. The assessee's 1st contention is that the mobile does not belong to him and it belongs to his employee Rakesh Sharma. As per law of evidence when the mobile was found at the premise of the assessee then presumption under law will be that it belongs to the assessee Mr. Atul Tantia. The onus to prove that it does not belong to him lies on assessee but he has failed to prove that it does not belong to him by way of any evidence. Since the assessee has failed to discharge the onus to prove that it does not belong to him, it has to be presumed that it belongs to him only. The assessee has not given any reason while it was a lying at his premises if it does not belong to him. Accordingly, it is held that the mobile belongs to the assessee only.*

*Now, I come to the instructions given by way of WhatsApp/SMS message regarding delivery of cash of Rs.10 lakhs on two occasions. During the time of the search, statement of the assessee was recorded in which it was admitted by him that this unaccounted cash transaction done between parties/concerns of GPT Group and others. He further admitted in the statement that SMS and Whats App print out suggest of instructions of Shivratn Sharma and the assessee Atul Tantia. During the course of assessment proceedings, opportunity was given to the assessee*

*to explain the transactions but the assessee preferred to remain silent which is conclusive proof that the assessee has nothing to explain in this regard. In these circumstances, I have no option but to hold that the cash transaction as per instructions in mobile pertains to the assessee. The assessee has submitted during the assessment proceedings that the said statement was retracted by him by act of non-including this unaccounted cash transaction in his return of income. The assessee has not filed any retraction statement either during the assessment proceedings or appeal proceedings. Non-inclusion of income in the return filed does not tantamount to retraction. Retraction has to be with logical reason and corroborative evidence which assessee has failed to substantiate.*

*In view of this, it is held that the alleged unaccounted cash belongs to the assessee and addition made of Rs.20 lakhs treated as undisclosed money of the assessee is upheld.*

*These grounds are **dismissed.**"*

4. After hearing rival parties and perusing the material available on record, we observe that the addition has been made on the basis of printouts taken out from the mobile recovered from the possession of Shri Atul Tantia, which was stated to be not belonging to the assessee but to Shri Shivratna Sharma, who was an employee of the assessee. In the WhatsApp message, there was a discussion about two entries of Rs.10,00,000/- each and according to the Assessing Officer these entries were suggestive that the transactions were carried out at the instance of Shri Atul Tantia. The printouts suggested that the transactions took place between the concerns/parties of GPT Group and others but nowhere it has been mentioned that the money belonged to Shri Atul Tantia. The Assessing Officer added this amount on the ground that the assessee failed to offer any explanation. The Id. CIT(A) confirmed this addition reasoning that the mobile was recovered from the possession of the assessee and the WhatsApp messages testified these transactions between the persons/concerns of GPT Group and others.

The Id. A/R vehemently argued before us that the mobile did not belong to the assessee which has been denied right from the beginning and nowhere the WhatsApp messages suggested that money was transferred or was owned by the assessee. The Id. A/R also argued that WhatsApp or SMS messages cannot be treated as evidence to make any additions in the hands of the assessee. In defence of his arguments, the Id. A/R relied on the following decisions:-

- 1) *ACIT vs. Machukonda Shyam in ITA No. 87/Viz/2020; order dt. 23/09/2020*
- 2) *A. Johnkumar vs. DCIT in ITA No. 3028/Chny/2019, order dt. 13/05/2022 (Chennai ITAT)*

The Id DR on the other hand relied heavily on the orders of authorities below and submitted that there was proper basis for making the addition which was rightly confirmed by the Id CIT(A). We have perused the decisions of the Co-ordinate Benches of the Tribunal and found that the ratio of law laid down is that no addition can be made on the basis of messages from SMS or WhatsApp between two persons unless there is corroborative evidences on record. The relevant part of the decisions are reproduced as under:-

**ACIT vs. Machukonda Shyam (supra):-**

"6. We have heard both the parties, gone through the orders of the authorities below. Shri Lanka Anil Kumar is an employee of M/s Navaratna Estates Ltd. A search u/s 132 was conducted in the residence of Shri Lanka Anil Kumar and certain sums were found in whatsapp messages in digits. When asked to explain, Shri Anil Kumar stated that the amounts were written in thousands represent lakhs and the total sum of Rs.1,05,00,000/- was taken as loan from the assessee in cash for his business purposes. When confronted with the assessee, he explained that the amounts mentioned in thousands are correct and the total amount would be in the range of Rs.5,000/- and Rs.10,000/- given to Shri Anil Kumar to meet the petty cash or miscellaneous expenses from M/s Navaratna Estates during registration of properties. A search u/s 132 was conducted in the case of

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Shri Lanka Anil Kumar as well as the assessee and the survey u/s 133A was conducted in the case of M/s Navaratna Estates. No evidence was found by the department either in the premises of the assessee or in the premises of M/s Navaratna Estates, having given loan to Sri Anil Kumar to the extent of Rs.1,05,00,000/-. In the search proceedings in the residence of Shri Anil Kumar also, no evidence with regard to unaccounted investment or expenditure representing the loan supposed to be taken from the assessee was found. Merely on the basis of the statement given by Shri Lanka Anil Kumar, which was subsequently retracted, the AO made the addition on the presumption that the assessee had advanced the sums to Shri Lanka Anil Kumar without bringing any evidence on record. The AO has neither given opportunity to the assessee to cross examine the third party nor disproved the explanation given by the assessee. As found from the order of the AO Sri Lanka Anil Kumar is an employee of M/s Navaratna Estates and drawing the salary of Rs.25000/- per month. He explained that the sums mentioned in the whatsapp messages were related to the amounts given to Sri Lanka Anil Kumar in the range of Rs.5,000/- to Rs.10,000/- to meet the petty cash and miscellaneous expenses. No evidence was found with regard to the investment made by Shri Anil Kumar in his own business out of the loans stated to have given by the assessee. In the above facts and circumstances there is no reason to disbelieve the statement given by the assessee that the payments were given for meeting petty cash or miscellaneous expenses. The Ld.CIT(A) following the decisions of Hon'ble Jurisdictional High Court as well as this Tribunal held that on the basis of notings and loose sheets found from third parties and the statement of third parties, the additions cannot be made without having corroborative / independent evidences. For the sake of clarity and convenience, we extract relevant part of the order of Ld.CIT(A) in para No.6.2 of page No.13 which reads as under :

"6.2. I have considered the assessment order and submissions of the appellant. It is seen that the addition made by the AO is solely based on the social media (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L. Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The law on this issue is laid down by the jurisdictional High Court, and followed by ITAT consistently in the following cases.

i) K. V. Lakshmi Savitri Devi Vs ACT 148 ITJ 517 (Hyd).  
ii) K. V. Lakshmi Saojtri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)  
iii) Jawahar Bhai Atmaram Hathivala Vs ITO 128 ITJ 36 (Ahd).  
iv) DCIT Vs B. Vijaya Kumar ITA No.930 & 931 of 2009 (Hyd).  
v) CIT Vs R. Nalini Devi ITTA 232 of 2013 (A. P)  
vi) CIT Vs P. V Kalyana Sundaran (2007) 294 ITR 49 vii). Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.  
viii) P.Venkateshwar Rao Vs DCIT ITA 25/825/Vizag/2012

The ratio laid down is that solely on the basis evidences such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidence and independent enquiries. Applying the above ratio to the facts of the case, it is held that the addition made is not warranted, the same is deleted."

6.1. No evidence was found by the department to establish that assessee has given loans to Shri Lanka Anil Kumar during the course of search and no evidence was found regarding utilization of purported advances by Shri Lanka Anil Kumar. Shri Anil Kumar also subsequently retracted from the statement and clarified that he has not received any cash loans from the assessee. Addition was made merely on the basis of whatsapp messages and the statement recorded from section 132(4) from Shri Lanka Anil Kumar which was subsequently retracted. Therefore we are of the view

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that the addition made by the AO is unsustainable and the Ld.CIT(A) rightly deleted the addition. Accordingly, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed.”

**A. Johnkumar vs. DCIT (Supra):-**

“9.4 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole basis for the AO to make addition u/s.69C of the Act, was election held for Nellithope Constituency of Pondicherry Union Territory. The search was conducted on 17.11.2016. the AO had linked photo identity cards issued by M/s.Johnkumar Trust, to general public of Nellithope Constituency, which was found in the premise of the assessee during the course of search, and election held for the constituency and concluded that the assessee had distributed cash of various denominations to voters and thus, made addition of Rs.17 Crs. u/s.69C of the Act, as unexplained expenditure. The AO had also taken support from a WhatsApp message sent from the assessee's mobile phone to Mr.Somu and analyzed those SMS messages on his own understanding and inferred that the assessee had used some code words to distribute cash to voters. Except photo identity cards issued by M/s.Johnkumar Trust, found in the premises of the assessee and WhatsApp message sent from assessee's mobile phone, no other evidence was with the AO to draw a conclusion that the assessee had distributed cash to voters amounting to rs.17 Crs. First of all, WhatsApp messages cannot be considered as a conclusive evidence to draw an adverse inference against the assessee, unless those WhatsApp messages are supported by corroborative evidences to indicate that those messages and contents represents undisclosed income of the assessee. Further, what is written in WhatsApp message is not readable in terms of any income or expenditure. We have gone through those WhatsApp messages, which is available in the assessment order and we find that nothing could be made out from those messages. In some messages, it was written inward on various dates and some tonnes. In some messages, it was written in outward in tonnes. From those messages, the AO given his own meaning and inferred with tonne means lakhs, inward means cash received for distribution and outward means cash distributed. The AO had also in his own meaning for some other contents recorded in WhatsApp messages and inferred cash distribution timings, shift change timings, etc., and concluded that the assessee has received so much cash and distributed so much of cash to various persons in the process. The AO neither bring on record from which person, the assessee has received cash and to whom the assessee has distributed cash. The AO neither made out a case of source for cash and destiny of cash distributed by the assessee. In other words, the AO has abruptly concluded in his own understanding of the messages, the assessee has received so much of cash and distributed so much of cash and which is nothing but cash for votes and hence, concluded that the assessee has incurred a sum of Rs.17 Crs. for distribution of cash to voters and which is nothing but unexplained expenditure taxable u/s.69C of the Act.

9.5 We have given out thoughtful consideration to the reasons given by the AO and we ourselves do not subscribe to the reasons given by the AO for the simple reason that first of all, the assessee was not contested for election held at Nellithope Constituency. Therefore, the question of assessee spending such huge money to distribute to voters does not arise. Secondly, the AO has solely relied upon the photo identity cards issued by M/s.Johnkumar Trust and inferred that each photo identity cards, the assessee has paid a sum of Rs.4,000/-. We find that neither the AO has found any physical cash distribution to voters nor examined any of the photo identity card holding to ascertain the fact that cash was distributed to them. Further, the AO had relied upon the WhatsApp messages sent from assessee's mobile phone to Mr.Somu and had given his own meaning to those messages. In the process, the AO neither tested the admissibility of WhatsApp messages as evidence u/s.69B of Evidence Act, nor examined Mr.Somu the recipient of messages sent by the assessee. The AO without carrying out necessary enquiries and also examining those persons, simply concluded that those messages are meant for distribution of cash and the assessee has spent such a huge amount for election expenses. In our considered view, the findings recorded by the AO is purely on suspicion and surmises manner without any evidences to justify his findings. Further, election to Nellithope constituency was held under strict monitoring agencies, including the Election Commission of India. The Election Commission of India deploys various agencies for monitoring election process. In this case, neither any of the agencies deployed for monitoring election process, was filed a case against the assessee for doing any malpractices in election, nor the Election Commission of India, had taken any action as pointed out by the Counsel for the assessee. The Election Commission of India has not initiated any enquiry and further, accepted election expenditure statement filed by the assessee. As regards, WhatsApp messages, the assessee had offered an explanation before the AO and contended that those messages are exchanged between the assessee and the other counterpart about the business carried on by them. The AO rejected explanation offered by the assessee on the ground that the assessee could not substantiate its claim. In our considered view, the AO is grossly erred in denying the explanation offered by the assessee, because whether or not any explanation offered by the assessee on the messages, but the fact remains that the AO could bring some positive evidence to link the WhatsApp messages to allege that the contents of WhatsApp messages depicts the undisclosed income or expenses of the assessee. In this case, on perusal of those WhatsApp messages what we could understand is that those messages are a dumb document without any corroborative evidence on record and therefore, no addition can be made on the basis of said documents.

9.6 The assessee has relied upon the plethora of judicial precedents in support of his arguments and contended that no additions could be made on the basis of loose papers without any corroborative evidence. The relevant case laws cited by the assessee are reproduced as under:

1. The Following Judgments shall be taken into consideration for the above appeal:-

Hon'ble Supreme Court has held in *State of Kerala Vs. M.M.Mathew-18.08.1978*, courts of law have to judge evidence before them applying the well-recognized test of basic human probabilities. Further held that, strong suspicion, strange co- incidences and grave doubts cannot take place of legal proof and further held how to establish the handwriting for which the Hon'ble Supreme Court has given guidelines which are illustrative.

2. The Hon'ble Supreme Court has held in *Commissioner of Income Tax salem Vs. P.V.Kalayanasundaram - 14.09.2007* in para 5, the ratio laid down in this case squarely applicable to the case of appellant/assesse, that the notings on the use pieces of paper on the basis of which the initial suspicion with regard to the undervaluation had been raised were vague and could not be relied upon, when the assessee did not give any explanation. The Hon'ble CIT Appeal had merely plagiarized the substantial portions from the order of the Deputy Commissioner of Income Tax (AO) in arriving at its conclusion and no independent assessment on the question of law.

3. The Law is well settled, a non-speaking document referred to as a "Dumb Document" without any corroborative material evidence on record, and finding that, such document has materialized into transactions giving rise to income of the assessee which had not been disposed in regular books of accounts by such assessee has to be disregarded for the purpose of the assessment to be framed u/s.153(A) and 153(c) of the Act as held in [CBI Vs. V.C.Shukia SC \(FB\) - 2.3.1998](#) (Popularly known as Jain Hawala case), clearly held that any presumption of transaction on some vague tenuous and dubious entries in a sheet of paper is not rational and hence legal, unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. Loose sheets of papers are "not book" and hence entries therein not admissible u/s.34 of [Evidence Act](#).

4. The Hon'ble CIT(A) erred in confirming the addition of Rs.2,26,89,820/-and Rs.17,00,00,000/- not appreciating that the writing on the loose papers found and seized during the course of search action as invalid and cannot be treated as document under [Evidence Act](#), relevant and admissible in evidence as held in *Raj Homes SV Group Vs. DCIT circle ITAT "B" Bench Mumbai, dt.7.3.2019*, holding that the additions based upon selective scribbling in rough note is de-hors any corroborative finding is not justified. Moreover, in this scribbling in the note is examined on the touch tone on the common law maxim of approbate and reprobate, the addition is further not justified. Relying on the decision of the Hon'ble Apex Court in the case of *CIT Vs. P.V.Kalayanasundaram 2007 (294) ITR 49 SC*.

5. The Hon'ble CIT(A), erred in confirming the addition, made by the Learned Assessing Officer, while the Show Cause Notice dated 11.12.2018 referred to only one issue i.e., Distribution of Cash to Voters of Nellithope Constituency but the Final Assessment Order passed by A.O. dated 30.12.2018 is on 4 issues and thus the Appellant was denying an opportunity which is against the well-established principles of Natural Justice which vitiates the entire proceedings u/s.263 of [IT Act](#), 1961. The admitted position is that, with regard to the other two issues no opportunity was allowed to the Appellant to submit suitable reply to the SCN before passing the Order of Assessment. On these 3 issues, there was complete denial of natural justice, for the reason that, the assessee was not allowed any opportunity whatsoever to present his case on these issues threshold. It is an established legal position that, there must be a complete nexus between the reasons or grounds indicated in the Show Cause Notice. The opportunity to be granted reply to the show cause notice must be effective and not an empty formality. A person who is required to show cause must know the basis on which action is proposed as held in *Colorcraft Vs. ITO - 303 ITR (AT) 7*.

6. The Hon'ble High Court in *Rajam Industries (P) Ltd., Vs. The Deputy Commissioner Commercial Tax officer-MANU/TN/0629/2010-07.06.2010*, (Para 6, 28, 46, 54 and 59) the Show Cause Notice itself is opposed to the principles of natural justice. The Show Cause Notice was issued as a mere formality. The notice has predetermined the issue against the Assesse/Appellant. The Notice has been issued on assumption and presumption. The statements of Hithayath Ali, K.Venkadesan and S.Muthuveerapandian were not examined in the presence of the Appellant/Assesse and no opportunity was given to cross examine the witness. When the Show Cause Notice quantifies and fixes the liability and responsibility of the Appellant there is nothing more adjudication. Non-furnishing of documents along with the Show Cause Notice is violation of principles of natural justice.

7. The quantum of tax payable has to be decided only at the time of adjudication while so fixation of the said amount is ascertained even at the time of issuing Show Cause Notice would amount to prejudicing the entire issue. It is also well settled that the concept of natural justice relating to Show Cause Notice includes the production of various documents and materials relied on by the authorities in the show cause notice that unless copies of those documents are furnished the other party cannot be expected to give an effective reply which forms part of the principles of natural justice. As held in

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(a) *Siemens Ltd., Vs. State of Maharashtra*, MANU/SC/8259/2008,

(b) *Sahi Ram Vs. Avtar Singh* Manu/SC/0378/1999

(c) *Government of A.P. Vs. A. Venkata Raidu* MANU/SC/8591/2006

(d) *Kumaon Mandal Vikas Nigam Ltd., Vs. Girja Shankar Pan]* Manu/SC/0639/2000

8. The Hon'ble CIT (A) erred in appreciating that there is lack of cross examination and violation of principles of natural justice as held in *Rima Maheswari, New Delhi Vs. ITO - 01.03.2019*.

9. The Hon'ble CIT(A) erred in appreciating that, addition is merely based on suspicion and non-furnishing of opportunity to cross examine. Without recording statement from the author of the information and the ultimate beneficiary namely Mr.Somasundaram and his father the candidate of Nellithope Constituency and who became the Chief Minister of Puducherry namely Mr.Narayanasamy, and affording any opportunity for cross examine them is violative of the Principles of Natural

Justice.

The above view further gathers reinforcement from the judgement of the Hon'ble Supreme Court in case of *Common Cause (A registered society) and others Vs. UOI*, [2017] 77 taxmann.com 245-11.01.2017 popularly known *Sahara dairies and Aditya Birla dairies case*. In this case, the Hon'ble Supreme Court, following the judgment rendered in case of *V.C. Shukla (supra)*, laid down the following principles: -

(i) Entries in loose papers/sheets are irrelevant and not admissible under [Section 34](#) of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;

(iii) The meaning of account book would be spiral note book/pad but not loose sheets;

(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;

(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.

10. The Hon'ble Supreme Court has held in *Ramji Dayawala & Sons(P) Ltd. Vs. Invert Import* AIR 1981 SC 2085: It was held by Supreme Court that the "mere proof of handwriting of a document not tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the fact in issue."

11. The Hon'ble Apex court held in *Mohd. Yusuf (Sir) Vs. D FAIR* 1968 Bom 1121, "the contents contained in document is hearsay evidence unless the writer is

examined before the court. The Hon'ble Court, thereof held that the attempt to prove the contents of the document by proving the signatures of the handwriting of the author thereof is to set at nought, the well-recognized rule that hearsay evidence cannot be admitted. If we consider the said piece of paper seized during the search in light of

definition of the word "Document" as given in the [Indian Evidence Act](#) and [General Clauses Act](#) and truthfulness of the contents thereof in the light of the aforesaid decision of the Hon'ble SC, we find that said paper contains jottings of certain figures by the same dose not describe or express the substance of any transaction and even if the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the transactions the way AO has deciphered them without support of corroborative evidence of the parties attributed to alleged transaction. The said paper, therefor does not come within the compass of definition of "Document", to be used as an evidence. The papers seized have no evidently value and hence same cannot be a basis to tax undisclosed income."

12. It is held in *Patel (DJU Vs. DCIT (200(n 72 ITD 340(Mum)*, "it was concluded with reference to sheet of paper found during the search by AO that the word "Rs." figuring with the sheet of belongs to the appellant, because he belonged to "Radhaswamy", cult and hence it belongs to him, but such an inference was not found sustainable on the basis of such slender evidence, so that the addition based on the sheet of paper was deleted".

13. It is held in *PCIT Vs. Deico (India) Pvt. Ltd. (2016) 67 Taxmann.Com 357 (Del)*, "no addition could be made under [Section 68](#) on the basis of loose papers found during search in this case indicating assessee's transaction with a company, when assessee not only denied having any dealing with the said company but also produced all necessary details for AO to make necessary inquiries and a letter from director of that company confirming that the said company did not have any transaction with assessee".

14. It is pertinent to mention that the aforementioned judgments of the apex court have been rendered not in direct context and interpretation of the [Income Tax Act](#) 1961 but still holds good for fastening the liability under the [Income Tax Act](#) also as far as the dumb documents are concerned. Relying on the judgment of the apex court in case of [Common Cause v. UOI](#)(supra), the Hon'ble Bench of ITAT, Ahmedabad in case of *Nishant Construction Pvt. Ltd. VACIT in ITA No.1502/AHD/2015*, held that in the absence of any corroborative evidence, "loose sheet" can at the most be termed as "dumb document" which did not contain full details about the dates, and its contents were not corroborated by any material and could not relied upon and made the basis of addition. Reliance can be also placed on the judgment of the Panaji Bench of ITAT in case of *Abhay Kumar Bharamgouda Patil V ACIT [2018] 96 taxmann.com 377 (Panaji -Trib.)* wherein the judgement of the Apex Court was relied upon.

15. Unless and until the contents of a document and its character and nature per se falls u/s.68, 69, 69B & 69C, the mere deemed presumption u/s.132(4A) r/w.sec.292C shall be of no help for the department to make addition.

16. *K.P.Vargheese Vs. ITO - 1981 (24) CTR* held that the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material receipt.

17. *Commissioner of Income Tax (Central-II) Vs. D.K.Gupta [2008] 174 TAXMAN 476 (DELHI)*: Dumb Document without any corroborating evidence or documents have materialized into transactions cannot be deemed to be held income of the assessee.

18. *Ashwani Kumar Vs. ITO - 1999 (39) ITD 183 Delhi - ITAT-08.08.1999* In the case of dumb documents, the revenue should collect necessary evidence to prove that the figures represent incomes earned by the Assessee.

19. *S.P.Goel Vs. Deputy CIP - 2002 (85) Mumbai* The loose paper in itself has got no intrinsic value. When it is a mere entry on a rule sheet of a paper. Then there has to be circumstantial evidences to support that the entry relates to income.

20. *D.A.Patel Vs. Dy. CIT 2000 72 ITD 340 Mumbai* 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.

21. *Amarjith Singh Bakshi Vs. Asst, CIT 2003 (86) ITD 13 Delhi*, held that any noting in the loose sheet is no evidence itself. Notings 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 notings.

22. *Nagarjuna Construction Co. Ltd., Vs. Dy. CIT 2012 (23) Taxmann.com 239*. The basis for addition is only loose slips. These note books, loose slips are unsigned documents not established nexus between the loose slips with actual receipt of interest. The loose slips seized during the course of search is a dump document having no evidentiary value, no addition can be made as material.

23. The Hon'ble MP High Court in case of [CIT v. C.L Khatri \[2005\] 147 Taxman 652](#) held that on the basis of loose slip not bearing any date and also not stating as to which period they related, no estimate of household expenses could be made for a particular year. In the absence of any other evidence, the estimate of household

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expenses in a particular year with reference to income of later year or future year was arbitrary and illogical. The Tribunal was held to be justified in deleting the additions.

24. The Calcutta Bench of ITAT in case of [T.S. Venkatesan vs. Asstt.](#) CIT [2000] 74 ITD 298 (Cal.) held that in the absence of corroborative evidence, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from the residence of a third party and certain general statements of said party.

25. In case of T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.), the Bangalore Bench of ITAT held that in absence of any external evidence, addition cannot be resorted to only on the basis of loose papers. The department had not brought on record any evidence to prove conclusively that the seized documents contained details of secreted profits which were chargeable to tax. No doubt, the seized papers contained statement in figures of what appeared to be the financial results of certain unnamed transactions but there was nothing either in law or in logic to warrant the conclusion that the figures denoted secreted profits which were chargeable to tax. The details of distribution contained in the seized papers did not by themselves present a preponderance of probabilities so as to support department's case that what was distributed was taxable income.

26. [In Dy. CIT v. Krorilal Aggarwal](#) [1994] 50 TTJ (Jab.) 3935 diary seized during search contained certain jottings. The Tribunal held that the jottings in diary neither represented books of account nor any document and, therefore, presumption under

[section 132\(4A\)](#) was not available and the addition made on the basis of the said jottings was deleted.

27. In the case of [M.V. Mathew v. ITO](#) [1993] 46 TTJ 353 (Coch.) unaccounted sum found noted in a diary and the assessee claimed that the same represented deposits from certain parties. The parties denied having deposited the amount. The Assessing Officer treated the amount as advance made by the assessee and addition on that account was made. In the absence of clinching evidence to show that the impugned sum was advanced the amount was treated as deposited and the addition made was deleted.

28. The Mumbai ITAT in case of ITO Vs Kranti Impex Pvt. Ltd. in ITA No. 1229/Mum/2013 vide order dated 28/02/2018 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. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted, that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law.

29. In the 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.

30. The Learned Assessing Officer and the Commissioner Appeal failed to appreciate the circular of Central Board of Direct Taxes in Circular No.F.No.286/2/2003-IT(Inv.)/ dt.10.03.2003 pointing out to the circular re Jurisdictional High Court in Commissioner of Income Tax Vs. S.Khader Khan Son- SC-2012 (25) taxmann.com 413 laid down the principles, Sec.133A does not empower any ITO to examine any person on : = ". So statement recorded U/S.133A, has no evidentiary value and any remission made during such statement cannot be made basis of addition. Decision of Madras High Court CIT Vs. S.Khader Khan Son - 2008 (300) ITR 157 Madras affirmed). In para 6, the circular of the Central Board of Direct Taxes, dt.10.03.2003 is not complied with.

31. The Hon'ble High Court of Judicature at Madras in M/s.M.Narayanan & Bros Vs. Assistant Commissioner of Income Tax MHC, DB, dt, 13.07.2011 (Para 11) followed CTO Vs. Khadher Khan (supra), Paul Mathews and Sons Vs. Commissioner of Income Tax 2003 (263) ITR 101 clearly held the admission of the Assessee.

32. The Hon'ble ITAT Cochin had rightly held the sale of agricultural land in Income Tax officer Vs. Shri. P.V. Abraham, dt.06.02.2019 and Income Tax Officer Vs.

*Abraham Varghese Charuwil 26.04.2017 rely upon ITO Vs. Dr.Koshi George 2009 (317) ITR, AT 116 Kochin - Para 16.*

*33. The Hon'ble Supreme Court in P.R.Metrani Vs. Commissioner of Income Tax, reported in 2006 (287) ITR, dealing with the scope of Sec. 132, 132(4A), 132(5) & 132(B), held "while the statement rendered at the time of search u/s. 132(4) may be used in evidence in any proceedings, yet that by itself does not become sole material to rest the assessment when the assessee seeks to withdraw the same by producing material evidence in support of such retraction.*

*34. The law declared by the Hon'ble Apex Court decision reported in 1973 (91) ITR 18 Pullankode Rubber Produce Co. Ltd., Vs. State of Keraia and another it is held it is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so, the tribunal is not justified in placing undue emphasis on the statement made by the assessee. The Hon'ble Supreme Court has laid down the Principles for Admission by the Appellant/Assessee.*

*35. The Learned Commissioner Appeal had merely plagiarized substantial portions from the order of the Assessing Officer in arriving its conclusion and no independent assessment on the question of fact and law that arose for consideration.*

*36. The Learned Commissioner Appeal borrowed extensively almost in toto from the Assessment Order of the Assessing Officer and the Commissioner Appeal and passed them off as if they were he himself the author, as held in [Commissioner of Income Tax Salem vs. P.V.Kalayanasundaram](#).*

*37. The Hon'ble High Court of Judicature at Madras in Commissioner of Income Tax Salem Vs. M/s.S. Khader Khan Son - DB, dt.04.07.2007 -Para 5.1, followed the decision in Pullankode Rubber Produce Co. Ltd., Vs. State of Keraia 1973 (91) ITR 18 the Apex court held that an admission is extreme to an important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect.*

*38. The provision u/s. 132(4) the power to examine a person on oath whereas u/s.133(A) does not empower any income tax officer to examine on oath. Whatever statement recorded u/s.133(A) is not given an evidentiary value as held in Paul Mathews & Sons Vs. Commissioner of Income Tax 2003 ITR (263) 101. The scope of Sec.132(4) and 133(A) was considered.*

*39. Similar view was taken by the Hon'ble High Court Judicature at Madras " Commissioner of Income Tax Vs. G.K. Senniappan 2006 (284) ITR 220 -DB- 17.06.2006.*

*9.7 In this view of the matter and by respectfully following various case laws relied upon by the assessee, we are of the considered view that the AO is erred in making additions towards unexplained expenditure u/s.69C of the Act, towards alleged distribution of cash for votes. The Ld.CIT(A)*

*without appreciating the fact simply sustained additions made by the AO and hence, we reverse the findings of the Ld.CIT(A) and direct the AO to delete the additions made towards unexplained expenditure u/s.69C of the Act, amounting to Rs.17 Crs. towards alleged distribution of cash for votes.*

*10. In the result, the appeal filed by the assessee in ITA No.3028/Chmy/2019 is partly allowed."*

6. We, further note that in the WhatsApp messages, it was never stated that the money belonged to the assessee but it was stated to be transactions between the concerns/parties of GPT Group and others. In our considered view the addition cannot be sustained as it based on the SMS or WhatsApp messages without any corroborative evidences. Considering these facts of the case, and the decisions of the Co-ordinate Benches of the ITAT, we are

inclined to set aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition.

7. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 28<sup>th</sup> March, 2023 at Kolkata.**

Sd/-

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Sd/-

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated 28/03/2023

*Sd/-*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata