आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL

Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

Sl.No.	ITA No	Assessee	Revenue	A.Y
1	3/Hyd/2023	Gavireddygari Aparna Kalyani, Anantapur PAN:ABIPG3993P	ACIT central Circle 2(3), Hyderabad	2018-19
2	4/Hyd/2023	Gavireddygari Hari Koshore Reddy, Anantapur PAN:ABIPG3991R	-do-	-do-
3	5/Hyd/2023	Isanaka Mastan Reddy Hyderabad PAN:AJRPM1992K	-do-	2019-20
4	6/Hyd/2023	Boorra Praveena Hyderabad PAN:AUBPB5885F	-do-	-do-
5	7/Hyd/2023	Andem Sandhya Reddy Ranga Reddy PAN:AFQPA3437A	-do-	-do-
6	8/Hyd/2023	Ballela Sai Sree Nellore PAN:BDEPB2916G	-do-	2017-18
7	9/Hyd/2023	-do-	-do-	2018-19
8	10/Hyd/2023	Garudapalli Shruthi Gupta, Hyderabad PAN:AZHPG7733J	-do-	2017-18
9	11/Hyd/2023	-do-	-do-	2018-19
10	12/Hyd/2023	Sanjay Garudapalli Hyderabad PAN:AIOPG2124K	-do-	2017-18
11	13/Hyd/2023	-do-	-do-	2018-19
12	16/Hyd/2023	Guduri Venkata Raju Hyderabad PAN:AHIPG4062B	-do-	2018-19
13	17/Hyd/2023	-do-		2019-20
14	18/Hyd/2023	Parije Venkat Ram Reddy, Kama Reddy PAN:AKBPP2794D	-do-	2018-19
15	19/Hyd/2023	-do-	-do-	2019-20

16 to 19	20, 21, 22 & 23/ Hyd/2023	Kanipakkam Hari Prasad Reddy Hyderabad PAN:AKEPK2041D	-do-	2016-17 2017-18 2018-19 2019-20
20 to 22	24 to 26/Hyd/2023	Pullalarevu Anusha Hyderabad PAN:AIVPA5223G	-do-	2017-18 2018-19 2019-20
23 & 24	14 & 15/Hyd/2023	Tricities Security & Allied Services (P) Ltd Hyderabad PAN:AABCT6890M	-do-	2017-18 2019-20
25& 26	37 & 38/Hyd/2023	Rama Subba Reddy Kudumula, Hyderabad PAN:AKFPK4851Q	-do-	2018-19 2019-20
27 to 29	44 to 46/Hyd/2023	Vamshi Krishna Reddy Goteke, Hyderabad PAN:AKJPG5365R	-do-	2016-17 2017-18 2018-19
30 to 32	75, 76 & 77/ Hyd/2023	Saritha Agarwal Hyderabad PAN: AVIPA3467A	-do-	2016-17 2017-18 2018-19
33	78/Hyd/2023	Rajesh Kumar Surana RR Dist. Hyderabad PAN: ABVPS4091H	-do-	2019-20
34 & 35	79 & 80/Hyd/2023	Sai Nath Reddy Padi Hyderabad PAN: AGWPP8152A	-do-	2017-18 2018-19
36 & 37	81 & 82/Hyd/2023	Kaushik Reddy Padi Hyderabad PAN: AKEPP2710Q	-do-	2017-18 2018-19
38	83/Hyd/2023	Karthik Raghupathi Reddy Padi, Hyderabad PAN: AKEPP2711R	-do-	2019-20

(Appellant)		(Respondent)
Assessee by:	Shri M.V. Prasad, CA	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	13/02/2023	
Date of pronouncement:	28/02/2023	

O R D E R

PER BENCH:

The captioned appeals filed by the respective assessees are directed against the separate orders dated 30/11/2022 of the learned CIT (A)-12, Hyderabad relating to respective assessment years. Since identical grounds have been raised by the respective assessees in all these appeals, therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First, we take up ITA No.20/Hyd/2022 for the A.Ys 2016-17 relating to assessee namely, Kanipakam Hariprasad Reddy as the lead case. The grounds raised by the assessee in this appeal read as under :

> *"1. The learned CIT (Appeals) has erred in facts and law while passing the order.*
>
> *2. On the facts and Circumstance of the case, notice issued u/s 153C is not valid and consequent Assessment is bad in law.*
>
> *3. On the facts and circumstance of the case, the Learned CIT(A) is not justified in confirming the addition made of Rs. 42,38,128/- under Section 69 of the I.T.Act.*
>
> *4. On the facts and circumstances of the case, the Learned CIT(A) would have appreciated that the satisfaction recorded by the Assessing Officer is not Assessment Year specific and incriminating specific and hence the Assessment was done without Jurisdiction.*

5. On the facts and circumstance of the case, the Learned CIT(A) has not observed the fact that the third party statement is not binding on the appellant for fastening the liability.

6. On the facts and circumstance of the case, the Learned CIT(A) erred in dismissing the appeal by relying on the dumb document and without valid evidence.

7. On the facts and circumstance of the case, the Learned CIT(A) has adjudicated the appeal with surmises and conjectures.

8. On the facts and circumstance of the case, the Learned CIT(A) is erred in dismissing the appeal with misconception and against the facts of the case.

9. On the facts and circumstance of the case, the Learned CIT(A) ought to have observed that the Assessing Officer has resorted to make the addition on mere document/loose paper without corroborative evidence. The document which does not describe and express any meaning cannot be relied upon by the Assessing officer with mere guess work."

3. The brief facts of the lead case are that the assessee is an individual and derives income from salary and other sources. The assessee had filed his original return of income u/s.139(1) of the Act on 12-02¬2018, declaring a total income of Rs.43,57,660/-. Subsequently, search and Seizure operation u/s. 132 of the Income Tax Act was conducted in the case of M/s.KMR Estates and Builders Private Limited and also on the directors of the company on 04-02-2019 wherein certain incriminating evidence with regard to receipt of money from buyers of villas were found and seized. Thereafter, notice u/s 153C dt.23.02.2021 for A.Y. 2017-18 was issued to the assessee. In response to such notice, the assessee had filed his return of income declaring total income at Rs.43,57,660/-. Subsequently, notices u/s. 143(2) and 142(1) of the Act were duly issued and served on the assessee by the AO.

4. During the course of search proceedings, Sri Kolla Madhava Reddy, M.D submitted details of the villa buyers and respective payments etc. and in that details, he submitted that assessee had paid Rs.3,49,73,003/- to the developer, Rs.1,93,73,003/- through bank and Rs.1,56,00,000/- in cash, in respect of Villa No.29. After examining the material on record and the information furnished, the AO has stated that the assessee during the assessment year 2017-18 paid "on money" amount in cash of Rs.42,38,128/- towards consideration over and above the amount mentioned in the sale document which was duly recorded in the books of the developer company i.e., M/s.KMR Estates and Builders Private Limited. The Assessing Officer in Para 4.2 to 4.7 of his order had given the details of money paid by the assessee by cheque as well as by cash on the basis of the seized documents. Further, the Assessing Officer had made pro-rata addition for A.Ys 2016-17 to 2019-20. The relevant paragraphs of the assessment order, are reproduced hereinbelow for the sake of completeness :

> *"4.2. Further, during the course of search proceedings, Sri Kolla Madhava Reddy, MD submitted details of the villa buyers and respective payments received through bank and by way of cash. With respect to the Villa No.29 purchased by the assessee from M/s. KMR Estates and Builders Private Limited, he submitted that the assessee has paid Rs.3,49,73,003/- to the developer, Rs.1,93,73,003/- through bank and Rs.1,56,00,000/- in cash.*
>
> *4.3. The company M/s. KMR Estates and Builders Private Limited approached Settlement Commission and admitted profit @ 35% on the total receipts received by it (including Cash receipts). The Settlement Commission after due verification accepted the admission made by the company and passed relevant orders u/s. 245D(4) of the Act.*

4.4. In light of the above, with respect to the Villa No.29 purchased by the assessee from M/s. KMR Estate and Builders Pvt. Ltd, it is evident that the assessee has paid Rs.3,49,73,003/- to the developer (Rs.1,93,73,003/- through bank and Rs.1,56,00,000/- in cash). In this connection, show cause notices were issued to the assessee as to why the amount paid in cash should not be treated as unaccounted income representing unexplained investment u/s 69 of the Act and should not be taxed in the relevant AYs in proportion to the payments made through ban, as below :

F.Y.	A.Y.	Amount paid through bank	Amount paid in cash	Total paid
2015-16	2016-17	95,969	77,278	
2016-17	2017-18	52,63,158	42,38,128	
2017-18	2018-19	1,19,13,876	95,93,581	
2018-19	2019-20	21,00,000	16,91,013	
	Total	1,93,73,003	1,56,00,000	3,49,73,003

4.5. The assessee made objections against issue of notice u/s. 153C which were disposed off. The sum and substance of the objections made by the assessee are as under:

Notice u/s. 153C is bad in law which is being issued based on the statement of the searched person. No proper satisfaction has been arrived as no document has been found and seized in the premises of searched person. Without satisfaction, jurisdiction to issue notice will not arise.

4.6. The objections made by the assessee were carefully considered and the same were rejected as not acceptable for the following reasons:

> *The satisfaction is recorded based on document found and seized as page no. 1 of Annexure A/KMR/RES/01 during the search proceedings conducted at the residential premises of the directors of KMR Estates & BuRsr,5 Pvt. Lt KMREBPL) and not merely based on the statement of the searched person. The seized document is a printout of a picture extracted from the hone of Sri Kolla Madhava Abhilash, Director, KMREBPL which contains payments received in cheques and cash from villa buyers of the villa project "Luxuria". The same is corroborated by the statement of Sri Kolla Madhava Abhilash, who stated that the printout has a list of 25 villas on whose sale KMREBPPL has received consideration in cash along with cheque payments from the villa buyers. Further, certificate u/s 65B of Indian Evidence Act issued by Digital Forensic Examiner during the search proceedings gives the aforesaid document evidentiary value even though it is secondary evidence. Therefore, the satisfaction present proceedings initiated u/s 153C are completely valid and legal.*

4.7. Further, the assessee denied making any cash payments over and above the payments made through banking channel for purchase of villa. However, from the incriminating material seized vide page no. 1 of annexure A/KMR/RES/01, it is evident that the assessee has paid Rs.1,56,00,000/- in cash for purchase of villa. Accordingly, the cash payment of Rs.77,278/- (in proportion to payments made through bank) made during the year under consideration is treated as unaccounted income representing unexplained investment u/s. 69 of the Act and taxed according to the provisions of section 115BBE of the Act. Penalty proceedings u/s. 271AAC of the Act are initiated separately."

5. Subject to the above, the assessment was completed by the Assessing officer u/s. 143(3) of the Income Tax Act, 1961 by making an addition of Rs.77,278/- as unexplained investment in purchase of Villa u/s.69 of the I.T.Act for the assessment year 2016-17.

6. The assessee feeling aggrieved by the order, had challenged the assessment order before the learned CIT (A) and the learned CIT(A) vide order dated 30.11.2022 had dismissed the appeals of all the assessees by a consolidated order for the following assessment years.

7. In support of appeals, ld.AR had made elaborate arguments and also filed written submissions. We are reproducing the written submissions and also the oral arguments, which are not captured in the written statement. In the written statement, it was submitted as under :

"A *Search and seizure operation U/s 132 of the IT Act was conducted in the case of M/s KMR Estates and Builders Private Limited on 04.02.2019 including the premises of the Directors. The investigation department has taken backup of the data in the Phone, of the Director Sri K.Madhava Reddy. In the Back up data the department has found the image which was alleged by the department that the seized material vide Annexure A/KMR/RES/01 contains payments received in cheques and cash from villa buyers of the villa project `Luxuria". When it is confronted to the Director Sri K.Madhava Abhilash he replied that the said seized document consists of receipts of on money.*

The Assessing Officer while arriving the satisfaction relied on the said seized document.

It is interesting to note that the pages do not contain:

- *Any heading to describe the nature of transactions the table depicts*
- *Any dates for the above transactions to suggest that the items belong to a particular assessment years.*
- *Do not indicate as to who prepared the documents.*
- *Do not indicate whether the numbers are rupees or any sq feet or any other measurement.*
- *Even if it is assumed as rupees, whether they are or thousands or lakhs.*
- *No signature of the preparer/checker etc to authenticate the document*

Ground No 2 &.4:

Appellant reply: In CIT Vs Sinhgad Technical Education Society [2015] 63 Taxmann.com 14 Hon'ble Bombay High Court (Paper Book page. No. 44to 48) issue of notice U/s 153C was held as illegal. The Court observed that the satisfaction should be assessment year specific and incriminating evidence specific. It was held that the satisfaction should indicate the Assessment year and the incriminating evidence relatable to that assessment year. A general satisfaction, which is vague, will not meet the requirement of law to initiate the proceedings U/s 153C. This case emphasizes the need for closer scrutiny of seized papers and establishing a co-relation. This Judgment has since been affirmed by the Supreme court in CIT Vs Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (Paper Book page. No. 49 to 57).

Ground No.3:

Where seized documents were not in name of assessee no action could have been undertaken in case of Assessee under Section 153C and further entire decision being based on huge amounts revealed from seized documents not being supported by actual cash passing hands, additions under Section 69C were not sustainable. [2017] 83 Taxmann.com 161 CIT, Central —III, Mumbai Vs Lavanya Land (P)Ltd (Paper Book page. No. 58 to 70)

Ground No.5:

The A.O. used the admission of the director made u/s 132(4) of the Act in their case against the assessee, but failed to note that admission of other parties cannot be considered as conclusive evidence against the assessee, unless there is a corroborative evidence on record, because the maker of statement can bind himself, but how he bind others from his statement without there being any further evidence on record. This was held by Hon'ble ITAT, Visakhapatnam bench in P. Koteswara Rao, Visakhapatnam Vs. DCIT, Central Circle, Visakhapatnam vide ITA No.251 & 252/, Vizag/2012 (Paper Book page. No. 71 to 88). This was also

further held by Hon'ble ITAT, Delhi in the case of Vijayashree Food Products Private Limited Vs ACIT vide ITA NO.587/DEL/2019 (Paper Book page. No. 89 to 115).

Ground No.6:

Your honours it is well settled legal position is that a non-speaking document without any corroborative material, evidence on record from the search and seizure perspective, such non-speaking seized documents are referred to as Dumb documents.

Hon'ble Supreme Court in the case of K.P.Varghese Vs ITO 131 ITR 597 held that the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material to support the factum of actual receipt.

Hon'ble High Court of Delhi in case of CIT, Delhi Vs D.K. Gupta 174 Taxman 476 upheld the order of the Tribunal wherein it was held that adhoc/Dumb documents without any corroborative evidence/finding that the alleged documents have materialized into transactions cannot be deemed to be the income of the Assessee.

Similar view was taken in the case of following decisions:

- *A Mahesh Reddy Vs The ACIT (Hyderabad) ITA No. 1236/Hyd/12*
- *Gyan Kumar Agarwal Vs ACIT (Hyderabad) - 60 DTR 241*
- *Dhatri Constructions P.Ltd., Hyderabad Vs Dy. CommissionerIncome-tax Central Circle 2, Hyderabad. ITA No. 2185/Hyd/2011*
- *ITO Vs Kranti Impex Pvt. Ltd. (Mumbai) vide order No: 1229/Mum/2013, Dated 28.02.2018.*

- *Principal Commissioner Income Tax, Central-2 Vs Umesh Ishrani - [2019] 108 taxmann.com 437 (Bombay).*
- *Deputy Commissioner Income-tax, Central Circle 1, Hyderabad Vs C. Krishna Yadav -[2011] 12 taxmann.com 4 (Hyderabad).*
- *Gyankumar Agarwal (Ind.) Vs Assistant Commissioner Income-tax - [2013] 30 taxmann.com 114 (Hyderabad - Trib.)*

  Gayatri Enterprise Vs Income-tax ficer, Ward 1(2)4 - [2020] 116 taxmann.com 359 (Gujarat)
- *Income-tax Officer Vs Bharat A. Mehta - [2015] 60 taxmann.com 31 (Gujarat)*
- *Commissioner Income-tax, (C) - III Vs Vineeta Gupta - [2014] 46 taxmann.com 439 (Delhi)*

Ground No.7:

a) Block Assessment on basis of imaginations and surmises not founded on established facts is not sustainable.

[2015] 59 Taxmann.com 375 High court of Andhra Pradesh and Telangana

in the case of CIT Vs Balaji Steel Profiles. (Paper Book page. No. 116 to 119)

b) In the case of K.V. Laxini Savitri Devi Vs. ACIT 6o DTR 148 (Paper Book page. No. 120 to 126) it was held by the ITAT Hyderabad Bench that "No addition can be made on the basis of a loose paper which does not contain the name and the date of payment. The department is precluded in drawing inferences on the basis of suspicion, conjecture and surmises and no addition can be made on the basis of such dump document or loose sheets.

On further appeal before the Hon'ble AP High Court, the court vide its order in ITTA No.563 of 2011 (Paper Book page. No. 127 to 134) upheld the decision of the Tribunal. While upholding the decision of the Hon'ble ITAT, the court held as following:

" We are of the view that the Tribunal has rightly held that the registered document dt.21-08-2006 under which the respondent purchased the above property showed that only Rs.65.00 lakhs was paid to the vendor by the respondent; that there was no evidence to how that the respondent had paid Rs.. Loo crore in cash also to the vendor; that no presumption of such payment of rs.t.00 crore in cash can be drawn on the basis of an entry found in a diary/loose sheet in the premises of C.Radha Krishna Kumar which is not in the respondent's handwriting and which did not contain the name of the respondent or any date of payment or the name of the person who made the payment. It rightly held that the Revenue failed to establish the nexus of the seized material to the respondent and had drawn inferences based on suspicion, conjectures and surmises which cannot take the place of proof. We also agree with the Tribunal that the assessing Officer did not conduct any independent enquiry relating to the value of the property purchased and the burden of proving the actual consideration in the purchase of the property is on the Revenue and it had failed to discharge the said burden."

c) No undisclosed Income can be computed by invoking the presumption U/s 132(4A) when the documents are seized from the premises of a third party. This was held in the case of [2005] 147 Taxman 59 (Visakhapatnam) (Mag.) IN THE ITAT VISAKHAPATNAM BENCH Smt. Bommana Swarna Rekha v. Assistant Commissioner of Income-tax. (Paper Book page. No. 135 to 146)

A presumption can be raised on the basis of possession of a document found during the course of search only against a searched person and, thus, no adverse inference could be drawn against the assessee on the basis of the possession of the diary with the third party. This was held in the case of SMC share brokers Ltd Vs DCIT [2008] 22 SOT 7 BY Hon'ble ITAT Delhi. (Paper Book page. No. 147 to 176).

a) Where Assessing Officer made addition to assessee's income on basis of a document seized in course of search, in view of fact that document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of Assessing Officer, impugned order of Tribunal deleting addition was to be confirmed.

Where Assessing Officer in course of block assessment proceedings made addition in respect of unexplained investment relating to purchase of property, in absence of any incriminating evidence with respect to payment over and above reported amount, addition so made deserved to be deleted.

[2015] 56 taxmann.com 7 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax-XIV v. Vivek Aggarwal. (Paper Book page. No. 177 to 183)

Ground No.9:

The Assessing Officer has resorted to make the addition on mere loose paper without corroborative evidence. The document which does not describe and express any meaning cannot be relied upon by the Assessing Officer.

It was held by Hon'ble Delhi High court in the case of CIT Vs Sant Lal vide [2020] 118 Taxmann.com 432 that

"13. In view of the aforesaid facts and the concurrent findings given by the CIT (A) and ITAT, it is evident that the Revenue has not been able to produce any cogent material which could fasten the liability on the respondent. The CIT(A) has also examined the assessment record and has observed that the AO did not make any further inquiry/investigation on the information passed on by the DCIT, Central Circle-19, New Delhi. No attempt or effort was made to gather or corroborate evidence in this relation.

14. In these facts and circumstances, we are not inclined to entertain the present appeal as no substantial question of law arises for our consideration. Accordingly, the present appeal is dismissed".

8. Ld.AR had also filled the following additional submissions :

"The invocation of Section 153C and additions made by the Assessing Officer in the Assessment proceedings by relying on dumb paper is against the law and also without proper evidence that the appellant has paid the on money. Subsequently learned CIT(A) confirmed the addition made by the Assessing Officer with misconception and also against the established facts. Both the Authorities considered the admission of the Builder that it has received the on money and also relied on the consequential admission before the Hon'ble ITSC. The Assessing Officer has to prove beyond doubt that there are actual cash payments made by the appellants under appeal.

The Assessing Officer failed to prove with cogent evidences that whether villa owner has paid the on money. The Assessing Officer invoked Section 153C with presumption because in some cases, the villa was Jointly registered on two names but the Assessing Officer has issued Notice U/s 153C to one villa owner only. Hence the satisfaction is without proper application of mind. Further the Assessing Officer relied on the Statement of Sri Kolla Madhava Abhilash Director in M/s KMR Estates and Builders private Limited wherein he answered for the specific question raised by the Investigating Officer while recording the sworn statement dated 04/05.02.2019 about the Seized Annexure A/KMR/RES/01 Pg.No.01. Accordingly, while passing the Assessment order, the AO has mentioned the same seized annexure i.e. A/KMR/RES/01 Pg No.07 and has not at all relied on the Seized Annexure A/KMR/OFF/7 or made any reference in the Assessment order.

However, the learned CIT(Appeals) has tried to improve the Assessment order by relying on the seized Annexure A/KMR/OFF/7 Pg No.07 which is not at all referred in the Assessment order passed by the Assessing Officer. There is no correlation between the figures mentioned in the seized Annexures A/KMR/RES/1 Pg No.01 and A/KMR/OFF/7 Pg No.07.

The following are the justifications why the said seized annexures cannot be relied upon and which are not at all relevant for invoking the provisions of Section 153C.

a) In the case of 2 assessees where the cheque payments were made in different assessment years the addition for alleged cash payment was made in one assessment year (Page No.11). Whereas in some cases it was in proportion to the cheque payments.

b) The alleged documents seized by the department itself shows that an amount of 450.46 was pending on the date of search from different villa owners. Presuming that this alleged document is true, the AO has made addition of the total amount as if it is fully paid in the hands of the respective appellants. (Page No.12)

c) In respect of Villa No 63 (ITA No. 4/Hyd/2023) the amount was mentioned as Zero in all the columns as per the seized document No Pg No.01 of A/KMR/RES/01 (Page No.13). However, in the document numbered as Pg No.07 of A/KMR/OFF/07 (Page No.14) it was mentioned under Agree value column 420 and under other columns Zero. However, the assessing officer made an addition of Rs. 2,50,25,000 in the hands of this assessee without any basis.

d) Further in respect of the following villas it was mentioned as below as per the seized document No: A/KMR/RES/01 Pg No.01

3	550	400	150	60	90
4	350	275	75	75	0
24	450	350	100	77.5	22.5
33	442	270	172	135	37
36	600	400	200	200	0
54	410	310	100	100	0
61	510	456	54	0	54
64	1440.5	940	500.5	490.5	10

Note: No description was given in this document about the numbers.

Against the same villa numbers as per the seized document No. A/KMR/Off/07 the following is shown:

ITA No(s)	Villa No	Total Value		Agree Value	Cash Receipt	Receipt	Pending
ITA 7/Hyd/2023	3	550	400	392	150	60	90
ITA 14/Hyd/2023 & 15/Hyd/2023	4	350	275	250	75	75	0
ITA 10/Hyd/2023, 11/Hyd/2023, 12/Hyd/2023 & 13/Hyd/2023	24	450	350	400	100	77.5	22.5
ITA 8/Hyd/2023 & ITA 9/Hyd/2023	33	442	270	285	172	135	37
ITA 5/Hyd/2023	36	600	400	312	200	200	0
ITA 6/Hyd/2023	54	410	310	276	100	100	0
ITA 79/Hyd/2023, 80/Hyd/2023, 81/Hyd/2023 & 81/Hyd/2023	61	510	456	250	54	0	54
ITA 3/Hyd/2023	64	1440.5	940	420	500.5	49.5	10

The above tables show that there is a clear contradiction in the numbers and the same are not matching with each other.

Further the CIT(A) has ignored the fact that all the payments were made by account payee cheques in respect of the construction agreements. Copies of bank statements along with copies of Agreement of Sale, sale deeds and Agreement for completion of villa are enclosed (Page Nos. 15 - 545).

The Assessing Officer relied on the Seized document Annexure A/KMR/RES/01 Pg No.01 while arriving the satisfaction for invoking the Jurisdiction U/s 153C. But the Learned CIT(A) is relied on the seized document Pg No.07 of A/KMR/Off/07 for supporting the addition made. It is humbly submitted that Learned CIT(A) has no jurisdiction to improve or substitute the satisfaction written by the Assessing Officer.

The legal sustainability of the satisfaction note is required to be determined on the basis of the actual contents of the satisfaction note recorded by the AO alone. It is not permissible to virtually expand the scope of the contents of the satisfaction note to include the issues that have a bearing on the determination of total income but which do not find a place in the satisfaction note. The satisfaction note recorded by the AO to enable him to assume jurisdiction u/s 153C should reflect the satisfaction of the AO regarding the fulfillment of the conditions laid down in section 153C for assumption of such jurisdiction based on the issues identified by him in the satisfaction note, the evidences contained in the seized material referred by him in the satisfaction note with regard to such issues and the discussion regarding the reasons for arriving at the satisfaction in respect of the identified issues based on such seized material. Whenever the legal sustainability of the satisfaction note is subjected to challenge by the assessee, the same is required to be evaluated with reference to the reasons recorded in the satisfaction note for arriving at the satisfaction with regard to the conditions prescribed in section 153C for assumption of jurisdiction and it is not permissible to travel beyond what has been recorded therein by the AO. This legal principle has been laid down by the courts in various decisions dealing with the legal sustainability of the "reasons recorded for reopening" of assessments u/s 147 of the Act. It has been held by the courts that the reasons recorded by the AO for reopening of assessments cannot be improved upon or substituted or supplemented at a later stage when subjected to judicial challenge and the issue of whether the AO had reasons to believe that the income has escaped assessment has to be adjudicated only with reference to the reasons actually recorded by the AO before the issue of notice u/s 148 without taking any assistance from external material. Some of the decisions which have laid down this legal principle with reference to the reopening of assessment u/s 147 are discussed in the following paragraphs:

1. In the case of Hindustan Lever Ltd Vs R.B.Wadkar (2004) 268 ITR 332 (Bombay), the Hon'ble High court held as under:

"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."

(Emphasis supplied)

2. In the case of Aroni Commercials Ltd Vs DCIT [2014] 362 ITR 403 (Bombay), the Hon'ble High court held as under:

"12. Therefore the power to reassess cannot be exercised on the basis of mere change of opinion i.e. if all facts are available on record and a particular opinion is formed, then merely because there is change of opinion on the part of the Assessing Officer notice under Section 147/148 of the Act is not permissible. The powers under Section 147/148 of the Act cannot be exercised to correct errors/mistakes on the part of the Assessing Officer while passing the original order of assessment. There is a sanctity bestowed on an order of assessment and the same can be disturbed by exercise of powers under Sections 147/148 of the Act only on satisfaction of the jurisdictional requirements. Further, the reasons for reopening an assessment has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act

seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and /or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice. At the stage of issuing notice under Section 148 of the Act to reopen a concluded assessment the satisfaction of the Assessing Officer issuing the notice is of primary importance. This satisfaction must be prima facie satisfaction of having a reason to believe that income chargeable to tax has escaped assessment. At the stage of the issuing of the notice under Section 148 of the Act it is not necessary for the Assessing officer to establish beyond doubt that income indeed has escaped assessment."

(Emphasis supplied)

3. In the case of Prashant S.Joshi vs ITO [2010] 324 ITR 154 (Bombay), the Hon'ble High court held as under:

"9. Section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 to 163, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The first proviso to section 147 has no application in the facts of this case. The basic postulate which underlines section 147 is the formation of the belief by the Assessing Officer that any income chargeable to tax has escaped assessment for any assessment year. The Assessing Officer must have reason to believe that such is the case before he proceeds to issue a notice under section 147. The reasons which are recorded by the Assessing Officer for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well-settled that the question as to whether there was reason to believe, within the meaning of section 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under section 148."

(Emphasis supplied)

4. In the case of Northern Exim (P) Ltd vs DCIT [2013] 357 ITR 586 (Delhi), the Hon'ble High court held that having regard to the entire scheme and purpose of the Act, the validity of the assumption of jurisdiction under Section 147 can be tested only by reference to the reasons recorded under Section 148(2) of the Act and the Assessing Officer is not authorised to refer to any other reason even if it can be otherwise inferred and/ or gathered from the records. The court held that the AO has to be confined only to the recorded reasons to support the assumption of jurisdiction and he cannot record only some of the reasons and keep the others up his sleeves to be disclosed before the Court, if his action is ever challenged in a Court of law.

5. The legal principle as laid down by Hon'ble High Courts as mentioned above with reference to the reasons recorded for reopening is applicable with equal force to the satisfaction note recorded for assumption of jurisdiction u/s 153C as held by the Hon'ble Kolkata Tribunal in the case of I Q City Foundation vs ACIT [2020] 84 ITR(T) 212 (Kolkata-Trib). The relevant portion of the said decision is extracted as under:

"14. It has to be kept in mind that when the challenge is to the validity of the satisfaction note which the AO has recorded to assume jurisdiction, we have to examine the satisfaction recorded as it is. There are case laws which throws light in the context of examining the legal validity of Satisfaction recorded by the AO while re-opening the assessment u/s. 147 of the Act. It is settled law that reasons as recorded for reopening the reassessment are to be examined on a 'stand-alone' basis. Neither any thing can be added to the reasons so recorded nor any thing can be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 Taxman 479/268 ITR 332 wherein their Lordships have, inter alia, held "it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons." Their Lordships added that " the reason recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the evidence…..". Therefore, reasons are to be examined only on the basis of reasons as recorded by the AO. This analogy/ratio decidendi of the Hon'ble High court is applicable to the 'Satisfaction-Note' prepared by the AO when he recorded his satisfaction note in respect of a third person (assessee in this case) against whom he/AO proposed to invoke the special provision and issue notice under section 153C of the Act."

6. In view of the judicial precedents discussed in the preceding paragraphs, it is required to be considered that the satisfaction note recorded by the AO in the case of the appellants for AYs mentioned in the satisfaction note has to be tested/evaluated only on the basis of the reasons recorded in the satisfaction note at the time of issuing the notice under Section 153C of the Act. The reasons recorded in the satisfaction note cannot be improved upon or supplemented or substituted subsequently by learned CIT(A) by making reference to the seized annexures and agreements which are not part of the satisfaction note. Hence the findings of the Learned CIT(A) are against law and facts.

The proposition that addition cannot be made merely on the basis of entries in loose sheets found in the premises of a third party without bringing on record independent evidence to corroborate such entries has been reiterated in several decisions. Some of the decisions to this effect are MM Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 200, Regency Mahavir Properties Vs ACIT [2018] 169 ITD 35 (ITAT-Mumbai), ACIT Vs. Katrina Rosemary Turcotte [2017] 190 TTJ 681 (ITAT-Mumbai), DCIT Vs. Vipin Aggarwal [2017] 83 taxmann.com 6 (ITAT Chandigarh), S.P Goyal Vs DCIT [2002] 82 ITD 85 (TM) ITAT, T.S Venkatesan Vs ACIT [2000] 74 ITD 298 (Cal) and Monga Metals (P) Ltd Vs ACIT [2000] 67 TTJ 247 (All).

In particular, it is of critical importance that the evidence to corroborate the entries indicating payments in the seized material found with a third party is available with specific reference to the fact regarding actual transfer of money from the said third party to the recipient named in the said entries in the seized material. The Hon'ble ITAT, Mumbai held in the case of Riveria Properties Private Limited Vs ITO in ITA No.250/MUM/2013 that the AO is required to bring further evidence on record to show that the money was actually exchanged between the parties in a case where there is no other evidence on record to prove that on-money was paid except the loose sheet found in the premise of a third party and admission made by the third party. The relevant part of the said decision is reproduced hereinunder:

In the present case on hand, except loose sheet found in the premises of third party and admission made by the third party in their assessment proceedings, there is no other evidence on record to prove that on money is paid. The assessing officer, without brought on record any evidence to prove that on money is exchanged between the parties, merely harping upon the loose sheet and the third party admission, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income. The A.O. is required to bring further evidence on record to show that actual on money is exchanged between the parties, but literally failed to do so. The A.O. did not conduct any independent enquiry relating to the value of the property instead, merely relied upon the statement given by the purchasers of the property, which is not correct. Further, there is no proof of origin and destination of on money. The A.O. failed to prove the source of the purchasers as to how the money was arranged and also failed to prove the deployment of unaccounted money by the seller by any form of evidence. Under these circumstances, based on paper jottings as conclusive evidence on money cannot be brought to tax as income from undisclosed sources.

The importance of having corroborative evidence on record to independently validate the entries of payments noted in the seized material found in the premises of a third party assumes much more significance where the alleged recipient of the said payments is an important constitutional functionary as that of the appellant, who was a Minister in the Government of Tamil Nadu during the relevant period. The Hon'ble Supreme Court observed in the case of Common Cause Vs. Union of India as under with regard to the issue of ordering investigation against important constitutional functionaries based on entries made by third parties in loose papers or diaries:

"We are constrained to observe that 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 and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of accounts but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have correlation with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in the absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily".

The above mentioned decision of the Hon'ble Supreme Court stresses the need for exercising caution and for bringing on record relevant, reliable and cogent evidence to corroborate the entries found in loose sheets and notebooks regarding the payments allegedly made to important constitutional functionaries, so that the process of law is not abused by unscrupulous persons or business houses in order to achieve ulterior goals. Though the said decision was rendered in the context of ordering criminal investigation against important constitutional functionaries, the principle stated therein is broadly applicable to the income tax proceedings also.

Hence in the instant case, there is no other evidence found and also brought by the Assessing Officer to corroborate that the appellant has paid the cash over and above the document Value. In the absence of the same, the Assessment made by the Assessing Officer is invalid.

9. On the other hand, the ld.DR had drawn our attention to the order of ld.CIT(A) wherein he had dealt with various contentions of the Villas' owners. We are reproducing below some of the relevant portions referred by ld.DR for the purpose of understanding the case of the Revenue.

10. The ld.DR referred to Pages 45 and 46 of the order of ld.CIT(A) to the following effect :

"The project name was"Luxuries" and was located at survey no. 78 to 93,Kondapur, Hyderabad. The project was started in the F.Y. 2014-15 and was spread out in Ac.12-26.6 guntas. Out of the said land, the company owned Ac.10-01 guntas. The total project consisted of 69 villas ranging from 350 sq.yards to 595 sq. Yards in area. As on the date of the search, it was noted that the agreements were entered into for approximately 25 villas and the sale deeds were registered for 13 villas out of these 25 villas. During the course of the search, with regard to these 25 villas, a document summarizing the actual consideration received including unaccounted cash was found, which gave the actual description of the state of affairs villa wise regarding the accounted sale consideration and the unaccounted cash, being on-money, received with respect to these villas.

During the course of the search, these facts were corroborated through the various documents and the messages retrieved from the mobile phones of Mr. Kolla Madhava Abhilash, Director of the developer company M/s. KMR Estates 86 Builders Pvt. Ltd. The documents so seized and which are brought out in subsequent paragraphs lead to a conclusion that the unaccounted cash received namely on two counts, first being the unaccounted cash with regard to the purchase of the villa pocketed as unaccounted profit by the company and second for getting the specific works done as per the regular and customized specifications: The above factum of specifications is a phenomena which is relevant to all the villas in the seized sheet, wherein there was a component of transaction of unaccounted cash.

……

It is important and strange to note with the above background, the registered sale deeds however, only selectively mentioned in the specifications of the Villa regarding only two items namely Structure and Plastering and thus calling it "Semi finished residential villa" and consciously hid/concealed the works specified in the Agreement of sale for that villa. The extract of the registered sale deed wherein the villa was mentioned as "Semi".

10.1 The ld.DR referred to Page 50 of the order of ld.CIT(A) wherein the ld.CIT(A) had mentioned as under :

"The above specifications would make the villa furnished, thus the buyer and the developer were mutually acting together in concert to transact in unaccounted cash and having transactions outside the domain of the books of accounts and thus both were involved in evading taxes and using unaccounted money for the said purpose.

One such set of agreements, depicting the above situation can be analysed from the submission made by the owner of Villa No. 32, which shows as to how the transactions and agreements have been modified by selectively deleting the scope of work and specification to transact in unaccounted cash.

The documents pertaining to villa no. 32 assume importance and they were submitted by that appellant itself. There are three documents which have been duly signed by the owner of villa no. 32 Smt. P. Anusha along with the vendor no. 1 being the developer company. It is important to note that the developer company has already admitted the said position and only in the present adjudication the villa owners including the appellant are agitating the matter.

It is seen that the agreement of sale was entered on 05.08.2016 and the first 3 pages of the said agreement indicating the name of the owner P. Anusha are brought out as under:

……."

10.2 Thereafter, the ld.CIT(A) had reproduced the Agreement of Sale in the case of Ms. P. Anusha, W/o. Shri P. Govinda Reddy. He also referred to Schedules B and C of the Agreement of sale and he concluded as under :

The schedule B mentions the residential house/villa no. 32 and not as a semi furnished villa but a proper residential house which is on a plot of land of 500 sq.yards with a construction area of 5629 sq.ft.

The payment is mentioned in schedule C and is a sum of Rs. 2,25,00,000/- to be paid in various instalments. The cheque of Rs. 25,00,000/- was paid on 02.04.2016 and was encashed before the signing of this document. The specifications mentioned in the document are already reproduced in the pages of the order wherein the general specifications for the villa have been mentioned in the agreement of sale.

10.3 Thereafter, the ld.CIT(A) had reproduced the Sale Deed dt.24.05.2018 in favour of Ms. P. Anusha, W/o. Shri P. Govinda Reddy. The ld.CIT(A) on comparison of the Agreement of Sale and Sale Deed had drawn the following conclusion on page 61 of his order to the following effect :

"Therefore, it is seen that strangely iii, the document that the consideration has been reduced from the original Rs. 2,25,00,000/- to Rs. 1,15,00,000/- and the specifications have been reduced accordingly from a residential house to semi furnished villa for the purpose of the unaccounted income.

Thus the amount has been reduced by a sum of Rs. 1,10,00,000/-between the agreement of sale value And the registration value. There is no basis for this reduction when all these specifications have been completed as per the original agreement or were liable to be completed by the developer company. To accommodate this sum of Rs. 1,10,00,000/-, one more agreement was entered as this villa was not complete on the date of registration with the specifications so agreed and thus on 24.05.2018 i.e. the same date of registration, an agreement for completion of villa was entered which is as under ….."

10.4 Thereafter, the ld.CIT(A) had referred to the "Agreement for completion of Villa" entered between KMR Estates and Smt. P. Anusha on Pages 62 and 63 of his order. On the basis of these three documents namely, Agreement of Sale, Sale Deed and Agreement for completion of Villa, the ld.CIT(A) had drawn the following conclusion on pages 65 and 66 of his order :

> *"Here it is mentioned that the difference of As. 2,25,00,000/- as per the original agreement of sale and Rs. 1,15,00,000/- as per the registered sale deed being a sum of Rs. 1,10,00,000/- is the agreement towards completion of villa and the same has been paid by P. Anusha. The dates for the payment and also the mode of the payment is silent in this regard and neither the same was accounted by 'the recipient which implies that the cash has been received from time to time by the developer from the villa owner.*
>
> *Thus, as the mode of the payment of this sum is unaccounted funds and has not been recorded in the books of accounts of the developer or the owner. The sources of these funds remain unaccounted. The page no. 6 of the agreement further mentions specifications which are part of the original agreement dated 05.08.2016 and which have not been mentioned in the registered sale deed dated 24.05.2018. This agreement also shows that the money has been received and there is no outstanding on the part of the buyer, thus the unaccounted cash was used for this purpose and the schedule of property in page no.5 mentions that the property is semi furnished, which implies that the modus operandi is to have agreements in case the work is not complete and later on take the cash or accommodate the cash and keep these transactions and agreement off the record.*
>
> *Thus, to sum up, the modus operandi was that initially the whole work was agreed upon between the parties and the consideration was needed to be paid as and when the final work was done. The consideration in cash for specific work was received by the developer in unaccounted manner and the registered sale deeds did not mention the specific works at all. It is important to note that the way the registered sale deeds have been executed with only two specific works structure and plastering, without mentioning all the specific works. The onus is on the appellant and other villa owners to prove as to how the other work was done and by whom and what were the sources of these funds and as it is clear that none of the villa owners have accounted for the same in the books of account and nor submitted any evidence before the Assessing Officer or during Appeal proceedings, this only implies that the villa with these specifications has been built out of unaccounted cash and also some portion of unaccounted cash has been paid to accommodate the element of unaccounted profit of the developer company.*

Thus, the unaccounted portion suited both the developer company and the appellant including the other villa owners for the purposes of accommodating the unaccounted money in the villa and also able to evade the stamp duty on the same as applicable.

It will be important to note that most of the sale deeds registered in a particular year are almost at similar prices per sq.ft to suit the convenience of accounting only the cheque payment and for SRO purposes. These observations can be corroborated with the seized documents which are discussed as mentioned in the subsequent paragraphs.

The Assessing Officer has relied on the core document seized from the mobile phone of the Director of M/s. KMR Estates & Builders Pvt. Ltd. recorded the transactions with respect to 25 villas in a tabular form and the total quantum collected from each buyer for the villa including the appellant."

10.5 The ld.DR had submitted that the seized material vide Annexure A/KMR/RS/01 was not a dumb document and for that purposes, he ha drawn our attention to the findings of the ld.CIT(A) at pages 67 to 72 to the following effect :

"…… Image intentionally left ..

…….

The above page no.1 of Annexure A/KMR/RES/01 is understood as under, after due admission and explanation of the same by the Managing Director of the company in its sworn statement:

Column no.1 - Villa Number

Column no. 2 Total sale consideration with respect to the villa

Column no. 3- Part of sale consideration receivable through banking channel

Column no. 4 - Part of sale consideration in cash,

Column no. 5- Amount of cash received, out of the sale consideration in cash as mentioned in column no. 4

Column no. 6- The balance cash to be received, out of cash component mentioned in col. No. 4 (all the amounts are mentioned in lakhs}

The tabular form of the above document is brought out as under:

2	350	825	25	0	25
3	550	400	150	60	90
4	350	275	75	75	-0
5	290	240	50	50	0
6	397	197	200	200	0
7	383.5	300	83.5	75	8.5
24	450	350	100	77.5	22.5
25	600	450	150	50	100
28	400	300	100	100	0
29	379	223	156	156	0
30	475	235	240	240	0
31	475	235	240	220	• 20
32	375	225	150	150	0
- 33	442	270	172	135	37
34	494	344	150	150	0
. 36	600	400	200	200	
50	289.5	207	82.5	82.5	0
54	410	310	100	100	0
56	330	211.54	118.46	100	18.46
60	525	375	150	150	0
61	510	456	54	0	54
63	0	0	0	0	0
64	1440.5	940	500.5	490.5	10
65	675	325	350	350	0
66	600	435	165	100	65
0	0	0	0	0	0
0	0	0	0	_ 0	0
0	0	0	0	0	0
0	11791	8028.54	3761.96	3311.5	450.46

The total cumulative cash for 25 villas sO' received was Rs. 3761.96 lakhs out of the total sale consideration of 11791 lakhs of these villas. The balance amount of cheque is duly recorded in the books of accounts and also finds place in the bank transactions between the appellant and the company and it is in lakhs only matching with the column, therefore it is only logical and correct to conclude that the cash component is in lakhs only. There is no such dispute which can arise regarding this conclusion from the document seized as the explanation by the Director was duly corroborated with the bank statements of the appellant and the company, rather not only the appellant but all the villa owners.

An almost identical paper was also seized from the premises of M/s KMR Estates and Builders Private Limited vide page no.7 of Annexure A/KMR/OFF/07 which also corroborates the same.

10.6 The ld.CIT(A) at page 70 had reproduced the typed copy of Annexure A / KMR /Office/07 to the following effect :

"The excel copy of the above document is brought out as under :

Villa No.	Total Value		Agreementvalue	Cash Receipt	Receipt	Pe
2	350	325	325	25	0	
3	550	400	, 392	150	60	
4	350	275	250	75	75	
5	290	240		50	50	
6	397	197	197	200	200	
7	383.5	300	300	83.5	75	
24	450	350	400	100	77.5	
25	600	450		150	50	
28	400	300	300	100	100	
29	379	223	222	156	156	
30	475	235	392	240	240	
31	475	235	235	240	220	
32	375	225	225	150	150	
33	442	270	285	172	135	
34	494	344	, 307	150	150	
36	600	400	312	200	200	
50	289.5	207	207	82.5	82.	
-54	410	v 310	276	100	100	
56	330	211.54	230	118.46	100	
60	525	375	375	150	150	
61	510	456	250	54	0	
63	0	0	420	0	0	
64	1440.5	940	420	500.5	49.5	
65	675	325	325	350	350	
66	600	435		165	100	
67	0		825			

The explanation by Sri Kolla Madhava Abhilash, Director of the Developer company on the date of the search i.e. 04.02.2019 for page 1 of the seized material A/KMR/RES/01 was as under:

"Q.11 I am now showing youqz print out of a picture extracted from your phone (Apple X) bearing the number (9553066666) which is seized vide page No. .1 of Annexure A/ KMR/ RES/ 01. Please explain the contents of the note.

A: I confirm that it is a printout from my phone which contains 6 'columns. These details pertain to the project "Luxuria". This is a list of 25 villas already sold out wherein registration have been completed in respect of some villas. The total receipts on account of sale of these villas is Rs. 117.91 crores. However, it includes both cheque payments as well as some cash component is also there which is received to meet cost of some extra works as per the choice of the buyer. The cash received is used for additional works and the payments are made in cash only. However, we have not maintained proper record for the cash receipts and expenditure in the books of accounts of the company."

Thus, the seized document relied upon by the Assessing Officer very clearly indicates the amount of cheque and unaccounted cash received from the buyers including the appellant. The document very clearly brings out as to against each villa, how much cash was received and how much cheque was received by the company from the appellant and other villa buyers.

Thus, the appellant and other buyers have paid the amounts in cheque which are duly reflected in their bank statements and the respective villas have been registered in their names, either before the date of search or subsequently. The appellant and the other buyers have not disputed the said fact that the respective villas have not been registered in their names and the cheques were not issued by them. Therefore, it is a very clear case of identifying villa no. with the name of the appellant, and also the registered deed gives the same name. The list of Villa owners including the appellant along with villa number as per the registered deeds is brought out as under:

Villa No	Name of the Villa Owner
2	NalliVenkataPrameela Rani
3	Dr. A.Sandhya Reddy
4	Tricities security and allied services P ltd
5	K.Ramasubba Reddy
6	P.Venkatram Reddy
7	G.VenkatRaju
24	Sanjay Garudapally
	Shruthi Gupta Garudapally
25	Ch.Vishnu Mohan Reddy
28	G,Vamshikrishna Reddy
29	K.Hariprasad Reddy
30	Naga La,kshmi
31	Buchepalli Siva Prasad Reddy
32	P.Anusha
33	BallelaSaiSree
34	Charan Tej Naidu Chintakun a
36	I.Masthan Reddy
50	RameshchandraMajitha
54	BorraPraveena
56	Saxita Agarwal
60	P.Karthik Reddy
61	P.Kaushik Reddy
	P.Sainath Reddy
63	G.Hari Kishore Reddy
64	G.AparnaKalyani
65	Rajesh Surana
66	P,Sharani

As discussed above, the villa number directly corroborates the appellant and thus the seized document cannot be called a dumb document and also the cheque payment made by them. It will only preposterous to even claim that it cannot be related to the appellant in that regard. The schedule of cheque payments as on the date of search matches with the appellant and the other buyers with regard to their bank statements and none of them including the appellant have raised any such dispute in the regard of the above factual conclusion."

11. It was pointed out by the ld.AR that at this juncture, the additions were not made by the Assessing Officer based on Annexure A/KMR/OFF/07. He had also submitted that the seized material Annexure A/KMR/RES/1 is a dumb document. It was submitted that the ld.CIT(A), wrongly took the help of Annexure A/KMR/OFF/07 to explain the dumb document. He had also drawn our attention to the satisfaction recorded by the Assessing Officer, u/s 153C of the Act which was reproduced by ld.CIT(A) at page 112 of his order, wherein the Assessing Officer had only relied upon seized material Annexure A/KMR/RES/01 to the following effect :

"SATISFACTION NOTE U/S 153C OF THE INCOME TAX ACT

Sri. Hari Prasad Reddy Kanipakam - PAN: AKEPK2041D –

During the course of search, material was seized vide Annexure A/ KMR/ RES/ 01 & A/Kit/IR/OFF/ 07. As per the statement of Sri Kolla Madhava Abhilash, Director of KMR Estates & Builders Put. Ltd., recorded on 05.02.2019, the printout of a picture extracted from the phone of Sri Kolla Madhava Abhilash seized as Page No. 1 of Annexure A/ KMR/ RES/ 01 contains details of the villa project 'Luxuria'. Sri Kolla Madhava Abhilash stated that the printout has a list of 25 villas on whose sale KMR Estates & Builders Pvt. Ltd., has received consideration in cash along with cheque payments from the villa buyers.

Sri. Hari Prasad Reddy Kanipakam (PAN: AKEPK2041D) is the buyer of villa no. 29. Asper the seized document, the sale consideration of the villa no. 29 has cash portion of Rs.156 lakhs. From the above, it is evident that Sri. Hari Prasad Reddy Kanipakam has paid Rs.156 lakhs in cash as part of total sale consideration for villa no. 29 to KMR Estates & Builders Put. Ltd.

Therefore, I am satisfied that the information contained in the documents seized in the case of KMR Estates & Builders Put. Ltd,, & Group pertains to Sri. Hari Prasad ReddyKanipakam and the information contained therein has a bearing on the determination of total income of Sri. Hari Prasad ReddyKanipakam.Therefore, I am satisfied that the case of Sri. Hari Prasad ReddyKanipakam is covered under section 153C. In view of the above, the provisions of section 153C(1) are to be invoked for AY 2013-14 to 2018-19 and u/s 143(3) for AY 2019-20.

As per the provisions of section 153C,

where the Assessing Officer is satisfied that-

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handedover to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each other person and issue notice and assessee or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

*As per the above provisions of section 153C, being the jurisdictional officer of Sri. Hari Prasad Reddy Kanipakam, I am satisfied that the document seized pertains to Sri. Hari Prasad Reddy Kanipakam and it has a bearing on the determination of the total income of Sri. Hari Prasad Reddy Kanipakam for six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and accordingly, notice is being issued u/ s 153C for **the** assessment year….."*

12. The ld.CIT(A) at pages 76 and 77 had referred to page 2 of Annexure A/KMR/RES/01 and on the basis of the above, the ld.CIT(A) had concluded as under :

"The quantum of the unaccounted cash received by the company in certain cases has also been utilized for the additional works done as reflected in the seized document. The core document mentions the amount of cash paid by the appellant including the villa owner. One of the document pertaining to villa no.63 which was seized in page no. 2 of Annexure A/KMR/RES/01 is reproduced as under:

Image left intentionally.

The top of the page mentions villa no.63 and accounts for Rs. 4,70,40,000/- in cheque out of which as on the date of search, Rs. 4,38,40,000/- had been received. The above page is brought out as excel sheet as under:

Villa 63			7,85,00,000	
			3,14,60,000	4,70,40,000
Flooring and cladding with labour and material including external	500	4025000		
Door frames, shutter with veneer, polish, hardware and labour	80	644000		
Windows	80	644000		
Paint works internal with material and labour	65	523250		
railing	30	241500		
Shower cubicles	20	161000	(-6238750)	
Net total value			2,52,21,250	4,70,40,000
Amount received till date			2,36,50,000	4,38,40,000
Balance amount			15,71,250	32,00,000

This detailed working for villa number 63 was found in the mobile phone of Mr. K. Madhava Abhilash, where the consideration is of Rs. 7,85,00,000/-, out of which Rs.4,70,40,000/- was to be received through the banking channel. Further, the unaccounted profit margin of the developer and the specified work was estimated at Rs. 3,14,60,000/- out of which the owner of villa no, 63 provided material of Rs.62,38,750/- to its own liking which left the net consideration to be given by the buyer of that villa the balance amount of Rs. 2,52,21,250/-. The same page also records that out of the balance amount of Rs. 2,52,21,250/-, a sum of Rs. 2,36,50,000/- has already been received by the developer in unaccounted cash.

the seized material page no.2 also mentions the amounts received out of the total sale consideration, both through banking channel and also through cash. As per the working on the sheet, amounts of Rs. 32,00,000/-and Rs. 15,71,250/- were yet to be received through banking channel and cash component respectively as on date of search. It is seen that the document only records the cash of Rs. 2,36,50,000/- received till a particular date, whereas the final seized document mentions a sum of Rs. 2,50,25,000/- which is a small variation on the working of 'Rs. 2,52,21,250/, Thus the above sheet is a progressive sheet recorded at a certain -stage and at the final stage the sum of Rs. 2,50,25,000/- was settled. It is also important to note that the same working is done for villa no 63 and 64 for which the registered sale deeds were made on 03.06.2019 at identical amount of cheques and unaccounted cash. The address of the villa buyers no. 63 and 64 are the same that is R/O A 205, Jayakheti Orange County, Nanakrainguda, Hyderabad- 500032. The owner of villa no. 63 and villa no. 64 are related parties and belong to the same family. The above finding on seized document related to villa no.63 is also confirmed by Mr. K. Madhava Abhilash, Director of M/s .KMR Estates & Builders Pvt. Ltd., in his sworn statement recorded during the course of Search Proceedings on 04.02.2019.

The final cash amount recorded for villa no. 63 and 64 is Rs.2,50,25,000/- each in the seized document table cumulatively recorded as Rs. 5,00,50,000/- in the page no. 1 of Annexure A/KMR/RES/01. Further on verification of bank account statements and books of account in Tally package, it was noticed that an amount of Rs.4,00,00,000/- was received through banking Channel till that date. The registration was done subsequently after the date of Search which would have led to some negotiations registering the same on 03.06.2019 for the above villas. The cheque portion as usual was recorded in the books of account of the company. Whereas the balance amount received in cash was not recorded in the books of account.

However, it is stated that the excess amount received in cash is towards not only the unaccounted profit of the company but also towards the unaccounted receipt towards the agreed works and customized works mentioned in the sale agreement the villas.

The relevant extract of the sworn statement of Mr. K. Madhava Abhilash is reproduced hereunder for ready reference.

"Q13. I am now showing you a print out of picture extracted from your phone (Apple X) bearing the number (9553066666) which is seized and annexed the page No.2 of Annexure-ANAIR/RES/01. Please explain the contents of the note. A. I confirm that it is a printout taken from my phone. It is rough working pertaining to the villa No. 63 & 64 and it shows the total value of the both villas. The total value of the villa No. 63 & 64 is Rs. 7,85,00,000/- as per agreement of sale. However, the total value and amounts received for additional works are mentioned in page No. 1 against these villa Nos are final and the amount mentioned of Rs. 7.85 cr is forming part of the total value mention in Page No. 1 of Annexure- A/ KMR/ RES/ 01."

The above very clearly indicates that these are not simple papers but detailed working and also in certain cases mention the utilization of the unaccounted cash for construction as certain deduction has been given on account of the value of supplies provided by the buyer.

It will not be out of place to mention that the quantum for this purpose could even vary from villa to villa as the individual buyers will want their own specifications and may make their own supplies and thus would pay the additional amount for the extra works in a varied manner over and above the flat excess charged by the company who is selling the villa. Therefore the recording of the unaccounted cash thus varies from villa to villa as can be seen from the documents seized and discussed above and the same would also find a discuision in the subsequent paragraphs.

The most important thing is, there are three corroborative papers found which have been reproduced above in Annexure A/KMR/RES/01 in page no. 1, Annexure A/KMR/OFF/07 in page no. 7 and Annexure A/KMIRIRES/01 in page no. 2. These papers are corroborative and the paper no. 2 pertaining to villa no. 63 gives the breakup of the gash to be received after giving .due deduction of the supplies provided by the buyer.

Further during the PO operations there was again a verification carried out with the appellant's books, bank statement along with the sale deeds, sale agreements and the incriminating material above which included the villa of the appellant and the following summary was brought out as under:

Xxxxxxxxxxxxx"

13. The ld.DR also relied on pages 105 to 115 of the order of ld.CIT(A) to the following effect :

"It is seen that after the date of search, the registration value has increased gradually from 27.01.2020 (Villa No.60) to 05.02.2020(villa No. 25) to 24.03.2021 (Villa No.3). The plot no.3 bought at a later date being of the smallest size in area and plot was registered at a much higher value being at a later date and in a different year and the villa no.60 being of the largest size registered at a much lesser value.

It is seen that the villa no. 60 did not get much work done for the internal purpose but the size of construction was higher as it had more super built up area so the cash component paid was equivalent to villa no. 25 and villa no. 3. If the villa no. 60 would have got the other work done than the cash component would have gone much higher. Till the date of search this was the amount of the cash recorded in the respective villas, therefore the addition has been made accordingly.

Thus, the above seized document relied by the Assessing Officer and other documents gives the state of affairs of the unaccounted cash paid by the villa owners including the appellant and duly recorded by the developer company at some point of time before the date of search. The methodology and the reason for such recording is on account of cash received from villa has already been explained in detail with the documents, agreements and the specifications for the villas. It is a case of convenience regarding the recording of transactions and to accommodate the unaccounted cash received from the buyer by the recipient. The quality of work required and specified varies from villa to villa and is custom made and that is the reason the cash component has been different even for similar sizes as already highlighted in the above table. Further, to repeat, the specified work conducted has been concealed while registering the sale deed or has been done through a separate understanding or agreement which have been kept unaccounted or of the record.

The above seized document thus relied upon by the Assessing Officer in assessing the income of the appellant, is a proper record and depicts the true and correct state of affairs of the consideration received in cheque and unaccounted cash for the sale of villa in the project Luxuria, as found on the date of search and the said document would have been updated with regard to the appellant and other villa owners before the date of search. The document thus is not a dumb document, the appellant has given plethora of case laws regarding dumb documents, cogent material, corroborative evidence, the relevant period, the developer being a third party, no clinching evidence, undated seized document and whatever the appellant could think of the case laws which are available regarding dumb document in public domain. The analysis in the above paragraphs has very clearly established that the documents referred to the true state of affairs, identifies the villa owners and the appellant and that all of them were acting in concert to evade taxes with the developer company. The quantum of cash has been admitted by the developer company, further there is enough corroborative evidence brought on record to establish the concealing of information in the registered sale deed in respect of all the villas regarding the works done. The provisions u/s. 292C are very clear in this regard along with the admission of the recipient as already discussed above further enforces the factum of correctness of the addition made by the Assessing Officer. Therefore, the primary premises of the case laws have been rebutted in the above analysis and therefore the contention of the appellant on the legal basis is rejected.

The appellant might like to take a plea that these documents are not signed. It is important to note that the Income Tax Department conducts search operation and these documents includes the one which were found and extracted from the mobile phones and seized accordingly. It is important to note that the agreements are at time signed and at times work on a verbal goodwill and certain habitual tax evaders are smart enough not to sign all documents and survive on the social leveraging. The documents in most cases, especially when in certain cases the villas have already been delivered through registration are normally discarded or destroyed.

Whenever the transactions of an unaccounted nature are entered, the endeavour of the payer and recipient is to keep it secret and destroy it from time to time. To expect in the present age that people would be to be naive enough to sign the documents from time to time of unaccounted nature and keep it as record in perpetuity would be preposterous, though the Department does land up with such documents from time to time with its expertise and intelligence. The expertise and the intelligence with which the incriminating papers are seized should not be watered down by arguing that the certain fringe details were not found in the favour of a tax evader especially when the evidence along with commonsense very clearly indicates tax evasion and transactions in unaccounted cash. The circumstances and evidence very clearly indicates that the appellant has paid unaccounted cash for the acquisition of villa and has to be taxed accordingly.

What needs to be appreciated is that if the document describes the state of affairs and as the same has been established in the above paragraphs that the documentation is not random but brings out the anomalies of the fact which was presented in the books and the true affairs as in reality represented and documented in the seized document relied by the Assessing Officer.

The seized documents do not reflect the transactions of one person but of many villa owners including the appellant and establishes the modus operandi of payments in cheque compounded with unaccounted cash as a consideration for the purchase of villa and would squarely apply to the appellant and the other villa owners in toto.

The appellant has not been able to justify as to what was the source of the interiors, which were done in the villa as the same is not part of any official document and it is also a fact that even the developer company has not recorded and accounted the works for such interiors in its books of account as admitted by the Director of the company itself and a declaration was filed.

If the appellant has to be believed, it implies that the seller was only receiving cheque and was doing a charitable activity by doing the construction and interiors Out of its own pocket of its unaccounted income towards the interiors without charging to the villa owner including the appellant. The appellant to an extent has the audacity to believe that the adjudicating authority in the undersigned is too naïve to understand and appreciate the circumstances and the document.

As a judicial authority, the undersigned is expected to appreciate the documents in toto and the harping of the same by the appellant that it did not pay the unaccounted cash arid it is not even aware of any such thing or cross examination has not taken place is merely trying to find reasons to pretend innocence. It is important to note that the appellant including the villa owners are a party in manipulating the documents by registering semi furnished villas with the SRO and the agreement of sale is for fully furnished villa as per desired specifications. Therefore, the appellant including the villa owners and the developer company are people acting in concert and the agreement of sale and the registered document have signature of both the parties. So to an extent, the concept of cross examination itself is a silly argument when both the parties are acting together and is is also important to note that only the developer was searched and the evidence has been found.

The appellant including the villa owners have not furnished any proofs to have incurred the said interiors from their own accounted income. Thus, the issue of cross examination is of no relevance in the present case however, needless to state that it assumes further importance that one of the main accomplice of the appellant, in this effort of tax evasion that is the recipient has admitted the said sum as unaccounted and also offered the same to tax and this is not a case of fiction but a documented fact. The papers seized very clearly establish the unaccounted payments made by villa owners including the appellant and the same have been rightly taxed by the Assessing Officer.

Another ground raised by the appellant is that there is no record of as to which year the unaccounted cash has been paid, the Assessing Officer has found a bonafide method to calculate the said amount by factoring the time of cheque payments with the proportionate unaccounted cash paid and as per the declaration filed by the developer company. It is a real audacity on the part of a tax evader, when caught having been paid unaccounted cash to challenge the year of such payment of unaccounted cash taxed in that year by the Assessing Officer by following the same method for all the villa owners including the appellant. The recipient has offered the same for taxation as per its method of accounting. The appellant has also paid unaccounted cash and in the absence of -explicit evidence the most sensible way is to, arrive at a figure of unaccounted cash which is commensurate to the quantum of cheque. payment made in that respective year. The appellant's argument of challenging regarding the year of payment of, unaccounted cash other than what has been devised by the

Assessing Officer is not only perverse but a misplaced belief that the judicial authority like the undersigned are to even appreciate and adjudicate on such a brazen argument to seek relief, when the appellant has been established to have paid the sum of unaccounted cash as recorded in the seized document and just because the dates on the seized document are not explicitly mentioned. The work of interiors is a continuous process and there is a time lag between agreement of sale and registration and the Assessing Officer has been more than fair and just to the tax evader in fallowing the methodology.

In the present case, the appellant has paid cheque amounts of Rs.95,969/- in AY 2016-17, Rs.52,63,158/- in AY 2017-18, Rs.1,19,13,876/-in AY 2018-19, and Rs.21,00,000/- in AY 2019-20 towards purchase of the villa. Accordingly, the AO has calculated the total unaccounted cash of Rs.1,56,00,000/- on pro rata basis in the above AY. 2016-17 amounting to Rs.77,278/-, AY. 2017-18 amounting to Rs.42,38,128/-, AY. 2018-19 amounting to Rs.95,93,581/- and AY 2019-20 amounting to Rs.16,91,013/-.

In view of the comprehensive discussion made above, the addition of unexplained investment u/s. 69 of Rs.77,278/- for the AY 2016-17, Rs.42,38,128/- for the AY 2017-18, Rs.95,93,581/- for the AY 2018-19, and Rs.16,91,013/- for the AY 2019-20 made by the Assessing Officer, on account of unaccounted cash invested by the appellant towards purchase of villa, is held correct and accordingly grounds no.1 & 4 in all the four appeals are dismissed."

The appellant has also challenged the notice u/s. 153C of the Act. The Assessing Officer has recorded the satisfaction as under:

…….

The document so relied upon has already been discussed in the above paragraphs and also it has been established that the document pertains to the appellant also in the manner in which the cheque payments of the appellant being the owner of that villa number and the unaccounted cash payments have been recorded by the recipient company and also the admission of the same by the recipient. The above facts have already been analysed in the discussion above and the factum of the satisfaction of the Assessing Officer has been duly upheld and found correct. In view of the same, and the discussions in the above paragraphs, the satisfaction recorded u/s. 153C is upheld as it relies on the primary document, the statement and which has been corroborated with the documents on record.

In ground no.5, the appellant has contended that the Assessing Officer is not correct in relying on secondary evidence which is admittedly a printout taken from an electronic device contrary to the provisions of section 65B of Indian Evidence Act. It is seen that the Director of developer company has given statement regarding the contents of the evidence found from electronic device during the search proceedings and has admitted that the document is his record. The person with whom such document has been found has not challenged the

factum, therefore the appellant challenging the same is completely preposterous and thus stands rejected. Further, the similar and corroborative document containing identical contents was found and seized at the office premises of the developer company. Therefore, there cannot be any such ground which can be remotely entertained. Accordingly, the ground no.5 of all the four appeals is dismissed.

In ground no.2, the appellant has also contended that the Assessing Officer has not followed the principles of natural justice. It is seen from the Assessment Order that the appellant has been given sufficient time and opportunities to present its case, which in evident in the number of hearings given to the appellant, 7 in number. The appellant has not furnished any further information even in the appeal proceedings which it was prevented to submit during the assessment proceedings, therefore this ground is routine and without substantiation. The issue regarding cross-examination has already been elaborately discussed in the preceding paragraphs of the decision and therefore stands rejected. Further, the appellant has not disputed regarding the seized material relied upon by the Assessing Officer which is relevant in its case and the AO is not required to provide the application made by the developer company before Settlement Commission to the appellant. Hence, this ground no.2 of all four appeals does not hold ground and dismissed accordingly.

It has been established in view of detailed and elaborate discussion made in the above paragraphs that the evidence seized during the Search and relied upon by the Assessing Officer are not dumb documents or just a piece of paper but a true statement of affairs with regard to the receipts for each villa of the Project in cheque and cash, thus, very much linked to the appellant. Also the documents seized are corroborated by the director of the developer company in its sworn statements and the director has never retracted from its statements as claimed by the appellant. Even the developer company has admitted the same before the Settlement Commission. Therefore, the claim of the appellant that the developer company has retracted from its statement is incorrect. Accordingly, the grounds no.3 & 6 of all the four appeals are dismissed."

14. Ld.DR had filled the written statement in support of the case of Revenue to the following effect:-

"The following ground wise submissions are made in the above appeals filed by the assessee :

i) Notice issued u/s. 153C is not valid and consequent assessment is bad in law In all above appeals Notices u/s. 153C was issued and in response to the notices issued u/s. 153C the assessee filed returns of income.

During the course of Search certain incriminating evidences with regard to receipt of Onmoney from buyers of villas were found and seized. Sri Kolla Madhava Reddy, MD of the company in his answer to Question 3 in sworn deposition dated 25/03/2019 admitted that out of 25 villas sold, the total receipts on account of sale of villas is Rs.115.87 crores, which includes an amount of Rs.78.26 cr through banking channel and an amount of Rs.37.61 cr by way of cash.

ii) CIT(A) is not justified in confirming the addition u/s.69 of the I.T.Act

The CIT(A)'s decision at para 6 of his order has examined the issue at length and upheld the addition made by the AO and found to be correct. The CIT(A) stated that the evidence seized during the search and relied upon by the AO are not dumb documents or just a piece of paper but a true statement of affairs with regard to the receipts for each villa of the Project in cheque and cash, thus, very much linked to the appellant. Therefore, the AO has not made any addition based on any kind of assumption or surmise.

iii) Satisfaction recorded by the AO is not assessment year specific and incriminating specific and hence the assessment was done without jurisdiction:

The AO in his assessment order stated that "The satisfaction is recorded based on document found and seized as page no.1 of Annexure A/KMR/RES/01 during the search proceedings conducted at the residential premises of the directors of KMR Estates & Builders Pvt Ltd. (KMREBPL) and not merely based on the statement of the searched person. The seized document is a printout of a picture extracted from the phone of Sri Kolla Madhava Abhilash, Director, KMREBPL which contains payments received in cheques and cash from Villa buyers of the villa project "Luxuria" The same is corroborated by the statement of Sri Kolla madhava Abhilash who stated that the printout has a list of 25 villas on whose sale KMREBPL has received consideration in cash along with cheque payments from the villa buyers.

iv) Third party statement is not binding on the appellant for fastening the liability.

Certificate u/s.65B of Indian Evidence Act issued by Digital Forensic Examiner during the search proceedings gives the evidentiary value eventhough it is secondary evidence. The Hon'ble Supreme Court vide its order dated May 04, 2022 in Ravinder Singh @ Kaku Vs State of Punjab has observed that a certificate under Section 65B(4) of the Indian Evidence Act, 1872 is mandatory to produce electronic evidence.

v) The document relied on by the CIT(A) is a dumb document without valid evidence.

The CIT(A) held at page 112 of his order that the seized document relied upon by the AO in assessing the income of the appellant, is a proper record an depicts the true and correct state of affairs of the consideration received in cheque and unaccounted cash for the sale of villa in the project Luxuria, as found on the date of search and the said document would have been updated with regard to the appellant and other villa owners before the date of search. The document thus is not a dumb document.

vi) CIT(A) dismissed assessee's appeal with misconception and against the facts of the case.

The order of the CIT(A) is very clear and elaborately discussed each grounds of appeal filed before him.

vii) ***The AO has resorted to make the addition on mere document/loose paper without corroborative evidence.***

The assessee denied making any cash payments over and above the payments made through banking channel for purchase of villa. However, from the incriminating material seized vide page no.1 of annexure A/KMR/RES/01, it is evident that the assessees have made cash payments for purchase of villa."

15. Besides the above, the Revenue was also called upon to furnish the following details. Ld. DR filed letter sent to the Assessing Officer, which was to the following effect :

"2. The ITAT asked the following questions during the course of hearing:

i) When did the KMR Estates & Builders Pvt Ltd declare the amount, in which assessment year.

ii) Kindly send a report on two seized documents relied upon by the CIT(A). These were found when and whether assessee was confronted with it. It appears the CIT(A) has relied on those documents in his order, whereas AO has not commented on it.

iii) Refer to the page No.74 & 75 (in the case of Aparna Kalyani Gavireddygari, A.Y.2018-19) of CIT(A) order referring to the document seized from the premises of M/s.KMR Estates and Builders Private Limited vide page No. 7 of Annexure A/KMR/OFF/07 where a chart showing Villa No(2 to 67), Agreement Value, Cash Receipt, Receipt, Balance were shown. Kindly state the date of registration of these villas as to when these villas are registered in which assessment year 2015-16 or 2016-17. (shown below):

The excel copy of the above document is brought out as under:

Villa No.	Total Value		Agreementvalue	Cash Receipt	Receipt	Pending
2	350	325	325	25	0	25
3	550	400	392	150	60	90
4	350	275	250	75	75	0
5	290	240		50	50	0
6	397	197	197	200	200	0
7	383.5	300	300	83.5	75	8.5
24	450	350	400	100	77.5	22.5
25	600	450		150	50	100
28	400	300	300	100	100	0
29	379	223	222	156	156	0
30	475	235	392	240	240	0
31	475	235	235	240	220	20
32	375	225	225	150	150	0
33	442	270	285	172	135	37

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34	494	344	307	150	150	0
36	600	400	312	200	200	0
50	289.5	207	207	82.5	82.5	0
54	410	310	276	100	100	0
56	330	211.54	230	118.46	100	18.46
60	525	375	375	150	150	0
61	510	456	250	54	0	54
63	0	0	420	0	0	0
64	1440.5	940	420	500.5	49.5	10
65	675	325	325	350	350	0
66	600	435		165	100	65
67	0		825			

iv) Refer to para 6 page No. 49 & 50 of CIT(A) order where the CIT(A) referred to various construction details. The bench wants to know as to how the CIT(A) acquired such facts / details, was it part of assessee documents or any other. Kindly comment.

v) Whether Certificate under 65B was provided to the assessee, if so copy of the Certificate under 65B be forwarded to this office. Whether the assessee has accepted/confronted with it.

vi) With reference to Sec.292C the bench wants to know that what are the documents that were found and were used against the assessee and was it in accordance with law"

16. Assessing Officer filled the report to the letter of the ld.DR to the following effect:-

"FACTS OF THE CASES (common to all the appeals)

The above addition was made on account of unexplained investments by the appellant towards purchase of villa no.64 from M/s KMR Estates and Builders Private Limited. The addition made in the current AY pertains to the investment made in villa corresponding to each assessee. An annexure to this note showing various details of each appeal enclosed at page number.

A search and seizure operation u/s 132 was conducted in the case of reperation M/s KMR Estates and Builders Private Limited on 04.02.2019. During the course of the search, certain incriminating evidence with regard to receipts of on money in the form of unaccounted cash from the buyers of various villas including the appellant in the project "Luxuria" was seized. The modus operandi involved was of registering the Villa in the name of the buyer at a lesser cheque amount and taking the balance amount in unaccounted cash from the buyer. Thus recording the sale value of villa at a lesser price than actually received. The company was registering the villas at the cheque amount almost equivalent to SRO value and the balance which was taken in unaccounted cash was kept outside the books of accounts. ***The Managing Director of the company, when confronted and questioned during the course of search with the evidences, admitted the receipt of on money by way of cash*** *with respect to the villas, as were mentioned in the various seized documents and made an admission of the fact of suppressing the sales in the books of accounts with regard to the sale of these villas.*

EVIDENCES RELIED

The project name was "Luxuria" and was located at survey no 78 to 93 Kondapur, Hyderabad. The project was started in the FY 2014-15 and was spread out in Ac 12-26.6 guntas. Out of the said land, the company owned Ac 10-01 guntas. The total project consisted of 69 villas ranging from 350 sq yards to 595 sq. Yards in area. As on the date of the search, it was noted that the agreements were entered into for approximately 25 villas and the sale deeds were registered for 13 villas out of these 25 villas. ***During the course of the search, with regard to these 25 villas, a document summarizing the actual unaccounted consideration received including unaccounted cash was found, which gave the actual description of the state of affairs villa wise regarding the accounted sale consideration and the unaccounted cash, being on-money, received with respect to these villas.***

During the course of the search, these facts were corroborated through the various documents and the messages retrieved from the mobile phones of Mr. Kolla Madhava Abhilash, Director of the developer company M/s. KMR Estates & Builders Pvt. Ltd. The documents so seized and which are brought out in subsequent paragraphs lead to a conclusion that the unaccounted ***cash received namely on two counts, first being the unaccounted cash with regard to the purchase of the villa pocketed as unaccounted profit by the company and second for getting the specific works done as per the regular and customized specifications.*** *The above factum of specifications is a phenomena which is relevant to all the villas in the seized sheet, wherein there was a component of transaction of unaccounted cash.*

It is important to note that all the registered sale deeds in the case of these ***25 villas were identical in content and the only differentiating factor was the size of the plot and super built up area of the respective villa****.* ***It is seen that the Agreement of Sale in detail mentioned regarding the specific works which were to be carried out by the developer company to make the villa furnished with certain furniture and fixtures. It was seen that certain works/specifications were identical for all the villas further they also contained specific customized requirement of the individual villa owner in case the same is requested and suitable charges were obviously modified accordingly.***

It is important and strange to note with the above background, the registered sale deeds however, only selectively mentioned in the specifications of the Villa regarding only two items namely Structure and Plastering and thus calling it Semi finished residential villa" and consciously hid/concealed the works specified in the Agreement of sale for that villa*. The extract of the registered sale deed wherein the villa was mentioned as "Semi furnished" and registered with the SRO with only two specifications can be seen at page No. 51 of 121 (SCHEDULE "B" PROPERTY) in the case of Harikishore Reddy Gavireddygari (ITA 4/HYD/2023).*

The agreement of sale in the case of all the villa owners including the appellant mentioned the minimum (in one or two case certain less things were mentioned but mostly this was the general nature of work description) of the following specifications (page No.52 of 121 - (SCHEDULE "D" PROPERTY).

The above specifications would make the villa furnished, thus the buyer and the developer were mutually acting together in concert to transact in unaccounted cash and having transactions outside the domain of the books of accounts and thus both were involved in evading taxes and using unaccounted money for the said purpose.

One such set of agreements, depicting the above situation can be analysed from the submission made by the owner of Villa No. 32, which shows as to how the transactions and agreements have been modified by selectively deleting the scope of work and specification to transact in unaccounted cash The documents pertaining to villa no. 32 assume importance and they were submitted by that appellant itself. There are three documents which have been duly signed by the owner of villa no. 32 Smt. P. Anusha along with the vendor no. 1 being the developer company. ***It is important to note that the developer company has already admitted the said position and only in the present adjudication the villa owners including the appellant are agitating the matter.***

It is seen that the agreement of sale was entered on 05.08.2016 and the first 3 pages of the said agreement indicating the name of the owner P. Anusha are brought out as under : ***(Ref. to Agreement of Sale at page No.55 of 121 of CIT(A) order).***

The schedule B mentions the residential house/villa no. 32 and not as a semi furnished villa but a proper residential house which is on a plot of land of 500 sq yards with a construction area of 5629 sq ft.

The payment is mentioned in schedule C and a sum of Rs. 2,25,00,000/- to be paid in various instalments. The cheque of Rs. 25,00,000/- 25,00,000/- was paid on 02.04.2016 and was encashed before the signing of this document. The specifications mentioned in the document are already reproduced in the pages of the order wherein the general specifications for the villa have been mentioned in the agreement of sale.

Further, the sale deed for the same villa no 32 was registered on 24.05.2018. The first and the third page of the sale deed are as under ***(Ref to Page No. 61 of 121 of CIT(A) order).***

Further, the page no.6 of the registered deed mentions the consideration of the same schedule of property for a price of Rs.1,15,00,000/- only. The page is reproduced as under : ***(Ref to Page No. 63 of 121 of CIT(A) order).***

The page no. 14 of the deed mentions the schedule of the property and the specifications. The ***page no 14 mentions that it is a "Semi residential villa" The page no. 14 is reproduced as under: (Ref to Page No. 64 of 121 of CIT(A) order).***

[SCHEDULED PROPERTY (SCHEDULE OF THE INDEPENDENT HOUSE HEREBY SOLD)]

Therefore, it is seen that strangely in the document that the consideration has been reduced from the original Rs 2,25,00,000/- to Rs 1,15,00,000/- and the specifications have been reduced accordingly from a house to semi furnished villa for the purpose of the unaccounted income.

Thus the amount has been reduced by a sum of R 1,10,00,000/- between the agreement of sale value and the registration(value There is no basis for this reduction when all these specifications have been completed as per the original agreement or were liable to be completed the developer company. To accommodate this sum of Rs. 1,10,00,000/-, one more agreement was entered as this villa was not complete on the date of registration with the specifications so agreed and thus on 24.05.2018 i.e. the same date of registration, an agreement for completion of villa was entered which is as under: ***(Ref to Page No. 66 of 121 of CIT(A) order).***

Here it is mentioned that the difference of Rs. 2,25,00,000/- as per the original agreement of sale and Rs. 1,15,00,000/- as per the registered sale deed being a sum of Rs. 1,10,00,000/- is the agreement towards completion of villa and the same has been paid by P. Anusha. The dates for the payment and also the mode of the payment is silent in this regard and neither the same was accounted by the recipient which implies that the cash has been received from time to time by the developer from the villa owner.

DISCREPANCIES FOUND:

Thus, as the mode of the payment of this sum is unaccounted funds and has not been recorded in the books of accounts of the developer or the owner. The sources of these funds remain unaccounted. The page no. 6 of the agreement further mentions specifications which are part of the original agreement dated 05.08.2016 and which have not been mentioned in the registered sale deed dated 24.05.2018. This agreement also shows that the money has been received and there is no outstanding or the part of the buyer, thus the unaccounted cash was used for this purpose and the schedule of property in page no.5 mentions that the property is semi furnished, which implies that the modus operandi is to have agreements in case the work is not complete and later on take the cash or accommodate the cash and keep these transactions and agreement off the record

Thus to sum up, the modus operandi was that initially the whole work was agreed upon between the parties and the consideration was needed to be paid as and when the final work was done. The consideration in cash for specific work was received by the developer in unaccounted manner and the *registered sale deeds did not mention the specific works at all. It is important to note that the way the registered sale deeds have been executed with only two specific works structure and plastering, without mentioning all the specific works. The onus is on the appellant and other villa owners to prove as to how the other work was done and by whom and what were the sources of these funds and as it is clear that none of the villa owners have accounted for the same in the books of account and nor submitted any evidence before the Assessing Officer or during Appeal proceedings, this only implies that the villa with these specifications has been built out of unaccounted cash and also some portion of unaccounted cash has been paid to accommodate the element of unaccounted profit of the developer company.*

Thus, the unaccounted portion suited both the developer company and the appellant including the other villa owners for the purposes of accommodating the unaccounted money in the villa and also able to evade the stamp duty on the same as applicable.

It will be important to note that most of the sale deeds registered in a particular year are almost at similar prices per sq ft to suit the convenience of accounting only the cheque payment and for SRO purposes These observations can be corroborated with the seized documents which are discussed as mentioned in the subsequent paragraphs.

The Assessing Officer has relied on the core document seized from the mobile phone of the Director of M/s. KMR Estates & Builders Pvt. Ltd recorded the transactions with respect to 25 villas in a tabular form and the total quantum collected from each buyer for the villa including the appellant. The said document was seized and was itemized in Page No.1 of Annexure A/KMR/RES/01,which is reproduced at page No. 71 of 121 of CIT(A) order.

The total cumulative cash for 25 villas so received was Rs. 3761.96 lakhs out of the total sale consideration of 11791 lakhs of these villas. ***The balance amount of cheque is duly recorded in the books of accounts and also finds place in the bank transactions between the appellant and the company and it is in lakhs only matching with the column, therefore it is only logical and correct to conclude that the cash component is in lakhs only.*** *There is no such dispute which can arise regarding this conclusion from the document seized as the explanation by the Director was duly corroborated with the bank statements of the appellant and the company, rather not only the appellant but all the villa owners.*

An almost identical paper was also seized from the premises of/M/s KMR Estates and Builders Private Limited vide page no 7 of Annexure A/KMR/OFF/07 which also corroborates the same ***(Ref to Page 74 of 121 of CIT(A) order)***

STATEMENT OF SRI KOLLA MADHAVA ABHILASH, DIRECTOR

The explanation by Sri Kolla Madhava Abhilash, Director of the Developer company on the date of the search i.e. 04.02.2019 for page 1 of the seized material A/KMR/RES/01 was as under: ***(Ref to Page 75 of 121 of CIT(A) order)***

Thus, the seized document relied upon by the Assessing Officer very clearly indicates the amount of cheque and unaccounted cash received from the buyers including the appellant. The document very clearly brings out as to against each villa, how much cash was received and how much cheque was received by the company from the appellant and other villa buyers.

Thus, the appellant and other buyers have paid the amounts in cheque which are duly reflected in their bank statements and the respective villas have been registered in their names, either before the date of search or subsequently. ***The appellant and the other buyers have not disputed the said fact that the respective villas have not been registered in their names and the cheques were not issued by them****. Therefore, it is a very clear case of identifying villa no with the name of the appellant, and also the registered deed gives the same name. The list of Villa owners including the appellant along with villa number as per the registered deeds is brought out as under :* ***(Ref to Page 76 of 121 of CIT(A) order)***

As discussed above, the villa number directly corroborates the appellant and thus the seized document cannot be called a dumb document and also the cheque payment made by them. It will only preposterous to even claim that it cannot be related to the appellant in that regard. The schedule of cheque payments as on the date of search matches with the appellant and the other buyers with regard to their bank statements and none of them including the appellant have raised any such dispute in the regard of the above factual conclusion.

Just to bring the above point across, the following examples on a sample basis are brought out, which corroborate the villa number and the accounts of seven such buyers The itemized table consists of villa numbers 24, 28, 30, 34, 36.50 and 63 in that regard : ***(Ref to Page 78 of 121 of CIT(A) order).***

It was further verified from the books of accounts maintained in Tally accounting package that the company is recognizing sale consideration, only to considerations received through banking channels were recorded in the books of account whereas amounts received in cash were not recorded in the books of account of the company. The ledger copies in the books of M/s KMR Estates & Builders Pvt. Ltd in respect of Villa Nos 24, 30, and 50 are produced as under for ready reference ***(Ref to Page 79 of 121 of CIT(A) order)***

Thus, the above, as recorded in the books of accounts regarding the cheques corroborates with the table which was seized during the course of Search and the buyers of the villas including the appellant. The same, therefore, applies to the appellant's present matter even though its respective ledger is not brought out in the sample table of ledger brought out above. Therefore the issuance of the cheque that is the accounted portion and the mention of the villa number very clearly identifies the appellant and thus consequently also maps and identifies the quantum of the unaccounted cash recorded in the sheet with the payment made by the appellant for the purchase of the villa. This is the only conclusion which is possible and there is no other view which can be taken at all from the seized document.

*The **quantum of the unaccounted cash received by the company** in certain cases has also been utilized for the additional works done as reflected in the seized document. The core document mentions the amount of cash paid by the appellant including the villa owner. One of the document pertaining to villa no 63 which was seized in page no 2 of Annexure A/KMR/RES/01 is reproduced as under : **(Ref to Page 82 of 121 of CIT(A) order)***

This detailed working for villa number 63 was found in the mobile phone of Mr. K. Madhava Abhilash, where the consideration is of Rs 7,85,00,000/-, out of which Rs.4,70,40,000/- was to be received through the banking channel. Further, the unaccounted profit margin of the developer and the specified work was estimated at Rs. 3,14,60,000/- out of which the owner of villa no 63 provided material of Rs.62,38,750/- to its own liking which left the net consideration to be given by the buyer of that villa the balance amount of Rs 2,52,21,250/-. The same page also records that out of the balance amount of Rs 2,52,21,250, a sum of Rs 2,36,50,000/- has already been received by the developer in unaccounted cash.

The seized material page no.2 also mentions the amounts received out of the total sale consideration, both through banking channel and also through cash.

*As per the working on the sheet, amounts of Rs. 32,00,000/- and Rs. 15,71,250/- were yet to be received through banking channel and cash component respectively as on date of search. It is seen that the document only records the cash of Rs.2,36,50,000/- received till a particular date, whereas the final seized document mentions a sum of Rs. 2,50,25,000/- which is a small variation on the working of Rs 2,52,21,250/-. Thus the above sheet is a progressive sheet recorded at a certain stage and at the final stage the sum of Rs. 2,50,25,000/- was settled. It is also important to note that the same working is done for villa no 63 and 64 for which the registered sale deeds were made on 03.06.2019 at identical amount of cheques and unaccounted cash. The address of the villa buyers no 63 and 64 are the same that is R/O A 205, Jayabheri Orange County, Nanakramguda, Hyderabad-500032. The owner of villa no 63 and villa no. 64 are related parties and belong to the same family. **The above finding on seized document related to villa no.63 is also confirmed by Mr. K. Madhava Abhilash, Director of M/s KMR Estates & Builders Pvt. Ltd, in his sworn statement recorded during the course of Search Proceedings on 04.02.2019.***

The final cash amount recorded for villa no 63 and 64 is Rs.2,50,25,000/- each in the seized document table cumulatively recorded as Rs. 5,00,50,000/- in the page no. 1 of Annexure A/KMR/RES/01. Further on verification of bank account statements and books of account in Tally package, it was noticed that an amount of Rs.4,00,00,000/- was received through banking Channel till that date. The registration was done subsequently after the date of Search which would have led to some negotiations registering the same on 03.06.2019 for the above villas. The cheque portion as usual was recorded in the books of account of the company Whereas the balance amount received in cash was not recorded in the books of account.

However, it is stated that the excess amount received in cash is towards not only the unaccounted profit of the company but also towards the unaccounted receipt towards the agreed works and customized works mentioned in the sale agreement the villas.

The relevant extract of the sworn statement of Mr. K. Madhava Abhilash is reproduced hereunder for ready reference. ***(Ref to Page 85 of 121 of CIT(A) order)***

"Q13. I am now showing you a print out of picture extracted from your phone (Apple X) bearing the number (9553066666) which is seized and annexed the page No.2 of Annexure-A/KMR/RES/01. Please explain the contents of the note.

A. I confirm that it is a printout taken from my phone. It is rough working pertaining to the villa No. 63 & 64 and it shows the total value of the both villas The total value of the villa No. 63 & 64 is Rs 7,85,00,000/- as per agreement of sale However, the total value and amounts received for additional works are mentioned in page No. 1 against these villa Nos are final and the amount mentioned of Rs. 7 85 cr is forming part of the total value mention in Page No. 1 of Annexure A/KMR/RES/01"

The above very clearly indicates that these are not simple papers but detailed working and also in certain cases mention the utilization of the unaccounted cash for construction as certain deduction has been given on account of the value of supplies provided by the buyer.

It will not be out of place to mention that the quantum for purpose could even vary from villa to villa as the individual buyers will want their own specifications and may make their own supplies and thus would pay the additional amount for the extra works in a varied manner over and above the flat excess charged by the company who is selling the villa. Therefore the recording of the unaccounted cash thus varies from villa to villa as can be seen from the documents seized and discussed above and the same would also find a discussion in the subsequent paragraphs.

The most important thing is, ***there are three corroborative papers*** *found which have been reproduced above in Annexure A/KMR/RES/01 in page no. 1, Annexure A/KMR/OFF/07 in page no 7 and Annexure A/KMR/RES/01 in page no 2. These papers are corroborative and the paper no 2 pertaining to villa no 63 gives the breakup of the cash to be received after giving due deduction of the supplies provided by the buyer.*

Further during the PO operations there was again a verification carried out with the appellant's books, bank statement along with the sale deeds, sale agreements and the incriminating material above which included the villa of the appellant and the following summary was brought out as under:

Villa Collection Statement till the date of search ie, 4th Feb, 2019

(Ref to Page 87 of 121 of CIT(A) order)

Finally, these documents were again confronted with the Managing Director of the company and on 25.03.2019, and he stated as under

"I have gone through the sworn statement given by me on 05.02 2019 during the course of Search & Seizure action conducted u/s 132 at my office M/s. KMR Estates and Builders Pvt. Ltd., No. 1175, Road No.56, Jubilee Hills, Hyderabad.

However, we have submitted detailed reconciliation statement after verification of our bank accounts and books of account of the company in respect of sale consideration received through channel.

As per the said reconciliation statement we have received an amount of Rs.78.26 cr through Banking channel. The total sale consideration actually received by the company is Rs.115.87 cr only which includes amount received through bank of Rs.78.26 cr and amount received by way of cash Rs.37.61 er. Whereas it was mentioned as Rs.117.91 cr. In the loose sheet seized during the search proceedings Vide Page No. 1 of annexure.A/KMR/RES/01 which includes amounts through bank Rs.80.29 cr and through cash of Rs. 37.61 er The difference in the gross receipt of Rs. 2.04 cr was arrived due to bank reconciliation. Accordingly, the additional profit estimated on total receipts including bank and cash is now Rs 29.04 er Hence, I hereby confirming that the additional income admitted of Rs 29.04 30% on total receipt of Rs 115.87 Cr.

Thus, the receipt of cash has been admitted and offered as income by the recipient company. The company has filed the Assessment Yearwise chart, gross receipts of the company towards sale of Luxuria Villas and additional income admitted after considering 30% profit of Rs.29,03,21,366/ by including the receipts through cash as per the seized paper of Rs 37,61,00,000/- The additional income admitted by the company on total gross receipts is reproduced as under :

	Total receipts	Receipts through Bank	Receipts through cash	Total profit @ 30%	Profit already declared in the ROIs	Addl. Income to be offered
TOTAL	1158654873	782554873	376100000	347596461	57275095	290321366

It is important to note that the recipient company opted to file a petition in settlement commission and has offered income on the basis of 35% of the in gross receipts including cash and cheque.

The developer company in its Settlement Application declared the income for the above period as follows

	Total receipts	Receipts through Bank	Receipts through cash	Total profit @ 35% Rs.	Profit already declared in the income returned Rs.	Addl. Income to be offered Rs.
TOTAL	1161846358	785650358	376196000	406646226	173075095	233571131

On comparing the declaration and the Settlement application filed by the developer company M/s. KMR Estates & Builders Pvt. Ltd, it is observed that the company has admitted the almost same cash receipt of Rs 37,61,96,000/- a sum which is Rs.96,000/- higher than the seized material. Also, the company has offered more income @35% of total receipts in the Settlement Application being 5% more than the 30% admitted earlier.

Thus the papers seized as discussed above, establish that the documents relied upon are not dumb documents. The seized documents are incriminating evidences and also establish that the developer company has received sale consideration over and above the registered sale deed in cash by the appellant and other villa owners, which was not accounted in the books of accounts.

Further, during the search proceedings, Sri Kolla Madhava Abhilash, Director of the company has stated that excess cash was received from the buyers in order to get the extra works t to be done in the Villas, as per the choice of buyers. Therefore the excess cash received was utilized for the execution of these extra works, which were also incurred in cash. This further corroborates from the discussion above regarding the specifications mentioned in the agreement of sale and the registered sale deed During the search proceedings the director of the company was asked to produce details of the payments made to meet the expenditure in cash to meet these extra works in Luxuria project till that date.

Sri Kolla Madhava Abhilash has stated in his statement dated 05.02.2019 that no proper records were being by the company, and he was unable to produce the same. These receipts were mostly for the additional works and were used for these works which was evidenced by the material found at the site office. In fact, the supporting documents i.e bills/vouchers for additional expenses incurred, were not maintained properly. Therefore in order to cover up the insufficient documentation, for the extra works and deficiencies, the company has come forward to estimate the profit from the project at 30% on the total receipts, even though in the returns M/s KMR Estates and Builders Pvt Ltd was offering profit at 22% on its receipts as per the books of account

It was also submitted that the total receipts of Rs 117.91 crores also 117.91 includes Rs.37.61 crores received in cash towards additional works required to be done by the company which were adjusted proportionately in respective assessment years while estimating the profit.

Relevant portion of the statement of Sri Kolla Madhava Abhilash recorded on 05.02.2019is reproduced as under.

"Q12, Please give the details of cash received from the buyers and payments made to meet the expenditure in cash as stated by you in your earlier answer.

A. As no record is being properly maintained, I am unable to produce the same. These receipts are mostly for the additional works and are used for these works which was evidenced by the material found at the site office. In fact, the additional expenses incurred have not been maintained properly M/s KMR Estates and Builders Pvt Ltd. has been offering profit at 22% on its receipts as per the books of account. Keeping in view the lapses in maintenance of bills/ vouchers and other deficiencies, the company has come forward to estimate the profit at 30% on the total receipts as per the details given below.

(Rs.in crores)

	Total receipts	Total Profit @ 30%	Profit already declared in the ROIs	Addl. Income to be offered
Total	117.91	35.37	5.73	29.64

It is important to note that the on money taken has been either kept as unaccounted profit by the developer or has been utilized for the purpose of the internal structure and modifications as required by the buyer. If one looks at the chart of the villas booked in AY 2016-17 and were duly registered, the rates charged as per the registration deed were almost the same as the villas were booked in the FY 2015-16. On a sample basis if one compares the position of villa no. 28 and 56.

The registration rate as per registered deed is Rs 2095/- per sq ft for villa no, 28 and for villa no 56 it is Rs. 2073/- per sq.ft. Further, the cash paid for villa no 28 of the size 5629 sq ft was Rs. 1,00,00,000/- (Rs. 1776/- per sq ft) whereas the cash paid for villa no. 56 of size 4582 sq.ft was Rs 1,18,46,000/- (Rs. 2585/- per sq.ft). The payment schedule has already been the same and only difference is the year of registration as villa no. 28 was registered on 28.06.2017 and villa no 56 on 05.11.2018.

Whenever the transactions of an unaccounted nature are entered, the endeavour of the payer and recipient is to keep it secret and destroy it from time to time to expect in the present age that people would be to be naive enough to sign the documents from time to time of unaccounted nature and keep it as record perpetuity would be preposterous, though the Department does land up with such documents from time to time with its expertise and intelligence. The expertise and the intelligence with which the incriminating papers are seized should not be watered down by arguing that the certain fringe details were not found in the favour of a tax evader especially when the evidence along with commonsense very clearly indicates tax evasion and transactions in unaccounted cash. The circumstances and evidence very clearly indicates that the appellant has paid unaccounted cash for the acquisition of villa and has to be taxed accordingly.

What needs to be appreciated is that if the document describes the state of affairs and as the same has been established in the above paragraphs that the documentation is random but brings out the anomalies of the fact which was presented in the books and the true affairs as in reality represented and documented in the seized document relied by the Assessing Officer.

The seized documents do not reflect the transactions of one person but of many villa owners including the appellant and establishes the modus operandi of payments in cheque compounded with unaccounted cash as a consideration for the purchase of villa and would squarely apply to the appellant and the other villa owners in toto.

The appellant has not been able to justify as to what was the source of the interiors, *which were done in the villa as the same is not part of any official document and it is* ***also a fact that even the developer company has not recorded and accounted the works for*** *such interiors in its books of account as admitted by the Director of the company itself and a declaration was filed.*

If the appellant has to be believed, it implies that the seller was only receiving cheque and was doing a charitable activity by doing the construction and interiors out of its own pocket of its unaccounted income towards the interiors without charging to the villa owner including the appellant. The appellant to an extent has the audacity to believe that the adjudicating authority in the undersigned is too naive to understand and appreciate the circumstances and the document.

As a judicial authority, the undersigned is expected to appreciate the documents in toto and the harping of the same by the appellant that it did not pay the unaccounted cash and it is not even aware of any such thing or cross examination has not taken place is merely trying to find reasons to pretend innocence. ***It is important to note that the appellant including the villa owners are a party in manipulating the documents by registering semi furnished villas with the SRO and the agreement of sale is for fully furnished villa as per desired specifications. Therefore, the appellant including the villa owners and the developer company are people acting in concert and the agreement of sale and the registered document have signature of both the parties. So to an extent, the concept of cross examination itself is a silly argument when both the parties are acting together and is is also important to note that only the developer was searched and the evidence has been found.***

The appellant including the villa owners have not furnished any proofs to have incurred the said interiors from their own accounted income. Thus, the issue of cross examination is of no relevance in the present case however, needless to state that it assumes further importance that one of the main accomplice of the appellant, in effort of tax evasion that is the recipient has admitted the said sum as unaccounted and also offered the same to tax and this is not a case of fiction but a documented fact. The papers seized very clearly establish the unaccounted payments made by villa owners including the appellant and the same have been rightly taxed by the Assessing Officer.

Another ground raised by the appellant is that there is no record of as to which year the unaccounted cash has been paid, the Assessing Officer has found a bonafide method calculate the said amount by factoring the time of cheque payments with the proportionate unaccounted cash paid and as per the declaration filed by the developer company. *It is a real audacity on the part of a tax evader, when caught having been paid unaccounted cash to challenge the year of such payment of unaccounted cash taxed in that year by the Assessing Officer by following the same method for all the villa owners including the appellant. The recipient has offered the same for taxation as per its method of accounting. The appellant has also paid unaccounted cash and in the absence of explicit evidence the most sensible way is to arrive at a figure of unaccounted cash which is commensurate to the quantum of cheque payment made in that respective year.* ***The appellant's argument of challenging regarding the year of payment of unaccounted cash other than what has been devised by the Assessing Officer is not only perverse but a misplaced belief that the judicial authority like the undersigned are to even appreciate and adjudicate on such a brazen argument to seek relief, when the appellant has been established to have paid the sum of unaccounted cash as recorded in the seized document and just because the dates on the seized document are not explicitly mentioned. The work of interiors is a continuous process and there is a time lag between agreement of sale and registration and the Assessing Officer has been more than fair and just to the tax evader in following the methodology.***

In the present case, the appellant has paid cheque amount of Rs.4,00,00,000/- in the current AY towards purchase of the villa. Accordingly, the AO has calculated the total unaccounted cash of Rs 2,56,25,000/- in the current AY only.

In view of the comprehensive discussion made above, the addition of unexplained investment u/s 69 of Rs.2,50,25,000/- for the current AY made by the Assessing Officer, on account of unaccounted cash invested by the appellant towards purchase of villa, is held correct and accordingly ground no. 1, 2 & 7 are dismissed.

The appellant has also challenged the notice u/s 153C of the Act. The Assessing Officer has recorded the satisfaction as under:

SATISFACTION NOTE U/S 153C OF THE INCOME TAX ACT

Smt. Aparna Kalyani Gavireddygari - PAN: ABIPG3993P

"During the course of search material was seized vide Annexure A/KMR/RES/01 & A/KMR/OFF/07. As per the statement of Sri Kolla Madhava Abhilash Director of KMR Estates & Builders Pvt. Ltd, recorded on 05.02.2019, the printout of a picture extracted from the phone of Sri Kolla Madhava Abhilash seized as page No. 1 of Annexure A/KMR/RES/01 contains details of the villa project 'Luxuria. Sri Kolla Madhava Abhilash stated that the printout has a list of 25 villas on whose sale KMR Estates & Builders Pvt. Ltd., has received consideration in cash along with cheque payments from the villa buyers.

Smt.Aparna Kalyani Gavireddygari (PAN: ABIPG3993P) is the buyer of villa no. 64. As per the seized document, the sale consideration of the villa no. 64 has cash portion of Rs.250.25 lakhs. From the above, it is evident that Smt. Aparna Kalyani Gavireddygari has paid Rs 250.25 lakhs in cash as part of total sale consideration for villa no. 64 to KMR Estates & Builders Pvt. Ltd.

Therefore, I am satisfied that the information contained in the documents seized in the case of KMR Estates & Builders Pvt. Ltd., & Group pertains to Smt. Aparna Kalyani Gavireddygari and the information contained therein has a bearing on the determination of total income of Smt. Aparna Kalyani Gavireddygari. Therefore, I am satisfied that the case of Smt. Aparna Kalyani Gavireddygan is covered under section 153C. In view of the above, the provisions of section 153C(1) are to be invoked for AY 2013 14 to 2018-19 and u/s 143(3) for AY 2019-20.

As per the provisions of section 153C

Where the Assessing Officer is satisfied that

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned belongs to, or

(b)any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of much other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.

As per the above provisions of section 153C, being the jurisdictional officer of Smt. Apama Kalyani Gavireddygari, I am satisfied that the document seized pertains to Smt Aparna Kalyani Gavireddygari and it has a bearing on the determination of the total income of Smt. Aparna Kalyani Gavireddygari for six assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted and accordingly, notice is being issued u/s 1530 for the assessment year 2018-19."

The document so relied upon has already been discussed in the above paragraphs and also it has been established that the document pertains to the appellant also in the manner in which the cheque payments of the appellant being the owner of that villa number and the unaccounted cash payments have been recorded by the recipient company and also the admission of the same by the recipient. The above facts have already been analysed in the discussion above and the factum of the satisfaction of the Assessing Officer has been duly upheld and found correct. In view of the same, and the discussions in the above paragraphs, the satisfaction recorded u/s 153C is upheld as it relies on the primary document, the statement and which has been corroborated with the documents on record. Accordingly, the ground no 3 of the appeal is dismissed.

In ground no 4, the appellant has contended that the AO is incorrect in relying the seized document in which no amount of Rs.2,50,25,000/- is mentioned against Villa No.63. The issue with respect to villa no.63 & 64 has already been elaborately discussed in the preceding paragraphs of the decision and therefore this ground no 4 of the appeal stands rejected.

The appellant has further contended that the Assessing Officer is not correct in relying on secondary evidence which is admittedly a printout taken from an electronic device contrary to the provisions of section 65B of Indian Evidence Act. It is seen that the Director of developer company has given statement regarding the contents of the evidence found from electronic device during the search proceedings and has admitted that the document is his record. The person with whom such document has been found has not challenged the factum, therefore the appellant challenging the same is completely preposterous and thus stands rejected. Further, the similar and corroborative document containing identical contents was found and seized at the office premises of the developer company. Therefore, there cannot be any such ground which can be remotely entertained. Accordingly, ground no 8 of the appeal is dismissed

In ground no 5, the appellant has also contended that the Assessing Officer has not followed the principles of natural justice. It is seen from the Assessment Order that the appellant has been gives sufficient time and opportunities to present its case, which in evident in the number of hearings given to the appellant, 6 in number. The appellant has not furnished any further information even in the appeal proceedings which it was prevented to submit during the assessment proceedings, therefore this ground is routine and without substantiation. The issue regarding cross-examination has already been elaborately discussed in the preceding paragraphs of the decision and therefore stands rejected. Further, the appellant has not disputed regarding the seized material relied upon by the Assessing Officer which is relevant in its case and the AO is not required to provide the application made by the developer company before Settlement Commission to the appellant. Hence, this grounds no. 5 does not hold ground and dismissed accordingly.

It has been established in view of detailed and elaborate discussion made in the above paragraphs that the evidence seized during the Search and relied upon by the Assessing Officer are not dumb documents or just a piece of paper but a true statement of affairs with regard to the receipts for each villa of the Project in cheque and cash, thus, very much linked to the appellant. Therefore, the AO has not made any addition based on any kind of assumption or surmise. Accordingly, the grounds no. 6 of the appeal is dismissed.

17. In rebuttal, the ld.AR had submitted that the ld.CIT(A) had relied upon various documents which were not seized during the search carried out at the premises of M/s. KMR Estates for the purpose of making the addition in the hands of the assessee. The list of the documents as per the assessee are as under :

1) Agreement of Sale dt.05.08.2016 entered between M Shri K. Arvind Reddy and others and Ms. P. Anusha.

2) Sale Deed dt.24.05.2018 entered between Shri K. Arvind Reddy and others and Ms. P. Anusha.

3) Agreement of completion of Villa dt.24.05.2018 entered between M/s. KMR Estates and Ms. P. Anusha.

4) Ledger copies in the books of M/s. KMR Estates and Builders Pvt. Ltd with respect to Villa Nos. 24, 30 and 50.

5) Schedule of specification of Villa Nos.28 and 56 (Pae 87 of the order of ld.CIT(A)).

6) The Schedules B and C of Agreement of Sale in respect of Villa No.56.

7) Schedule D of Agreement of Sale of Villa Nos. 31 to 33.

8) Schedule D of Agreement of Sale of Villa Nos. 63, 64 and 66.

9) Schedule D of Agreement of Sale of Villa Nos. 3, 25 and 60.

18. It was submitted by the ld.AR that the additions u/s 153C can only be made in the hands of the assessee on the basis of the seized documents if they belong to the same assessment year and assessee. It was submitted that all the nine documents mentioned hereinabove were not seized documents as only one document was referred as a seized document by the Assessing Officer. No inference can be drawn on the basis of these documents that "on money" was paid by the assessee. The issue before us is whether the assessee had paid 'on money' either at the time of registration or subsequent for getting the interior work done.

19. The ld.AR had further submitted that details like name of the assessee, the Villa number, the mode of payment , the details of the person who made the payments are not available. It was submitted that it is the case of the Revenue that the cash was paid for providing specified facilities in the Villas as per the specification referred in "Agreement for completion of Villa". It was submitted that even in the Agreement for completion of Villa, the consideration had been duly mentioned which has been paid by Ms. P. Anusha by way of cheque. For the above said purposes, he relied upon page 63 of the order of ld.CIT(A) wherein it was mentioned as under :

"1). The First party shall complete the construction of-the said independent house. The balance of the consideration "as agreed in the agreement of sale dated 05/08/2016 in excess of the value indicated In the sale deed dated 24th May, 2018 i.e. Rs.1,10,00,008/- (Rupees One Crore Ten Lakhs only) would be the consideration towards this completion agreement.

2). The Second party paid a sum of Rs. 1,10;00,000/- (Rupees One Crore Ten Lakhs only) inclusive of TDS as per the applicable provisions of the Income Tax Act; 1961 towards advance and the First party hereby admits sad acknowledges the receipt of the said amount.

3). The independent house shall be constructed and completed 'in accordance with the Specifications detaitcd.in the Annexure to this Agreement and the same shall form part and parcel of this agreement.

4) During the period of construction till the construction is completed in all respects and the possession is delivered, the Schedule Villa shall be in possession of the First Party and the Purchaser is and shall continue to remain liable to pay all the amounts becoming payable under the terms hereof to the First Party and perform all his covenants. The Villa/house will not be delivered till all amounts becoming payable by The Purchaser to the First Party tinder the terms hereof are fully paid.

5). In the event of Purchaser desires-to change any of the specifications of the internal plan of the Schedule property, the First Party will subject to feasibility carry out and execute such' extra works as required by the Purchaser at an extra cost. After getting 'written approval from the purchaser on estimation of The First Party, -upon payment of Aha same, such additional works will be commenced and executed by the First Party. These requests have to be made well in advance in writing and agreed to by the First Party.

6) Unless prevented by the circumstances beyond its control, the first Party shall complete the construction of Scheduled Villa within 3- months 'front the date of this agreement with a 'further grace period of 1 month (hereinafter referred to as the 'COMPLETION DATE)."

20. It was submitted by the ld.AR that though the Agreement of Sale, Sale Deed and Agreement for completion of Villa cannot be relied upon by the Revenue, however, the conjoint reading of all the said three documents of P. Anusha in respect of Villa No.32 clearly mentioned that the total sale consideration of the Villa No.32, as per the specification, would be Rs.2.25 crores (Page 54 of the order of ld.CIT(A).) Ms. P. Anusha had paid a sum of Rs.1.15 crores at the

time of registration of sale deed (Page 59 of the order of ld.CIT(A)) and had also mentioned that a sum of Rs.1.10 crore was paid to M/s. KMR Estates and Builders Pvt. Ltd at the time of entering into Agreement for completion of Villa. There is no incoherency in the conduct of Ms. P. Anusha. Hence, a conclusion drawn on the basis of dumb document that the total sale consideration paid was Rs.3.75 crore which includes cash of Rs.1.50 crore was unsustainable and against the facts.

21. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the case laws filed on behalf of the parties. In the present case, the Assessing Officer made the additions in the hands of assessee on account of some alleged incriminating evidence regarding receipt of money from the buyers of Villas. The Assessing Officer had recorded the satisfaction reproduced hereinabove, wherein he had merely referred to only one seized document characterizing it as incriminating evidence with regard to receipt of the money from buyers by the builders. The Assessing Officer further relied upon the statement of Shri Kolla Madhava Reddy, M.D of M/s. KMR Estates and Builders Pvt. Ltd recorded on 25.03.2019 wherein he had admitted the additional income of Rs.29.04 crores @ 30% on the total receipts of Rs.115.587 crores. In the said total receipts amounting to Rs.115.587 crores, the said Director in his sworn statement had mentioned that Rs.78.26 crores were received through banking channels and Rs.37.6 crores were received by way of cash. The Director Shri Kolla Madhava Reddy had not given any details of the receipt of money like the name of the buyer, the amount received, date of payment etc.

22. The Assessing Officer relying upon the seized document Annexure A/KMR/RES/01, the statement of the Shri Kolla Madhava Reddy had made the addition in the hands of the assessee in four assessment years i.e., from 2016-17 to 2019-20. As per section 153C of the Act, assessment proceedings should be initiated for six years, for the reasons best known to the revenue, it was not initiated for all the six years. In the assessment year during the year under consideration, the Assessing Officer had made the addition of Rs.77,278/- whereas in the A.Y. 2017-18, the additions were made to an extent of Rs.42,38,128/-, in A.Y. 2018-19, Rs.95,93,581/- and in A.Y. 2019-20 an amount of Rs.16,91,013/- were made. The Assessing Officer had mentioned the bifurcations of the additions in his order vide para 4.4, reproduced at page 6 of this order.

23. The ld.CIT(A) had confirmed the addition in the hands of the assessee after relying upon the seized documents namely, Annexure A/KMR/RES/01, Page 2 of Annexure A/KMR/RES/01 and Annexure A/KMR/OFF/07. Besides the above, the ld.CIT(A) also relied upon various documents which were produced by some of the assessees in their replies. The details of the said documents are mentioned in the preceding paragraphs.

24. In the light of the above said facts, now we have to examine whether the addition can be sustained on the basis of the documents which were relied upon by the Revenue Authority or not ?

25. The Assessing Officer in Para 1 of his order, referred to the incriminating evidence with regard to the receipt of money from buyers for Villas. He referred to this document as Annexure A/KMR/RES/01 in Para 4.1 of his order and thereafter, relied upon the statement of Shri Kolla Madhava Reddy recorded on 25.03.2019. The typed copy of Annexure A/KMR/RES/01 was reproduced by the ld.CIT(A) in his order, which we have also reproduced elsewhere in this order.

26. From the facts of the present case, it is clear that Annexure A/KMR/RES/01 was retrieved from the mobile of Kolla Madhav Abhilash, Director, however, Assessing Officer had not referred to the statement of Kolla Madhav Abhilash, Director in his order nor had provided the copy thereof to the assessee. Further, certificates under section 65B of the Evidence Act was neither mentioned in the order nor provided to the assessee nor it was referred to in the impugned order. Even otherwise, Annexure A/KMR/RES/01, it cannot be said to be a receipt of money from buyers of Villas, as it is lacking the following material particulars :

I. The name of the person making the payment.
II. The date of payment
III. The mode of payment
IV. The details of amount paid
V. The purpose for which it was paid i.e. either for purchase of Villa or towards agreement for completion of Villa.
VI. The details of the recipient of money paid.
VII. The signature of the recipient/payer of the money.

27. The Annexure A/KMR/RES/01 is conspicuously silent on all the above said counts and in the light of the above said information, nothing can be inferred holding that the same is a receipt of payment or an incriminating document for the purpose of fasting the liability u/s 153C of the Act on the assessee. The alleged incriminating documents do not bear the name of the assessee nor his hand-writing nor the identification of the assessee. The alleged incriminating evidence was allegedly found from the mobile of the third party namely, Kolla Madhav Abhilash, Director, who may choose to write or maintain his mobile phone at his own sweet will and based on such inchoate and dumb document, no liability can be fastened on a third party like assessee before us. The Revenue had failed to corroborate the said dumb document with any other document found during the course of search. The statement of Kolla Madhav Abhilash, had not been referred to by the Assessing Officer . ld.CIT(A) in his order extensively referred to it in the order , without properly examining it, as to in which context it was made, albeit without affording the opportunity of cross examining to the assessee before us.

27.1. From the reading of the statements of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy, it is clear that no details of owners of Villas and payments made were mentioned. On the basis of Annexure A/KMR/RES/01, no satisfaction can be recorded as it did not give the details of payment etc. Further, the same satisfaction was recorded for all the four assessment years. There is no basis of making the addition of Rs.77,278/- on adhoc basis for the year under consideration. Annexure A/KMR/RES/01 did not mention the amount paid in the year 2016-17.

27.2 The ld.AR relied upon Section 292C of the Income Tax Act, and it was the contention of the ld.AR that section 292 C cannot be invoked for assuming that the document recovered from a third party would be binding and admissible against the assessee before us. The ld.CIT(A) had rejected above said contention of the assessee at page 113 of the order and held that the admission of the recipient (third party) would be enforceable against the other party in section 153C of the Act.

27.3 In our view, section 292C can only be invoked against **such person** in whose premises/possession, the said the incriminating document was found during the course of search u/s 132 of the Act. The word "such person" as used in section 292C is only referrable to the person in whose premises, the things were found in possession or control at the time of the search. Admittedly, the assessee before us was not the person from whose possession, the mobile was found, which allegedly contains the document and therefore, the invocation of section 292C by the ld.CIT(A) was without any basis and is contrary to law. Admittedly, if any, document is found in the premises / possession / control of such person, which belongs to the other person then the said document can be used for making the addition, however, it is necessary to prove that the said document is incriminating in nature and belongs to other person. The presumption under section 292C can only be invoked against such / searched person and not against other person / assessee before us. The above said proposition is based and relatable to the Evidence Act which casts a heavy duty on a person in whose possession, a thing or article was found to discharge the burden that it does not belong to him.

27.4 In the present case, no corroborative evidence was brought on record to confirm that the entries in Annexure A/KMR/RES/01 were actually disclose the payment of 'on money'. In our view, the Assessing Officer could have examined the accountant of M/s. KMR Estates and Builders Pvt. Ltd, Managing Director or Director of the developer company for the purpose of proving that 'on money' was paid by the assessee in the present set of appeals. In the statement of both, Shri Kolla Madhava Reddy and Kolla Madhav Abhilash, both Directors, there was no mention of the fact that assessee had paid the 'on money' over and above, the sale value mentioned in the registered sale deed. Quite contrary to the case of the Revenue, Kolla Madhav Abhilash, Director in reply to question No.12 had submitted as under :

> *Q.12 Please give the details of cash received from the buyers and payments made to meet the expenditure in cash as stated by you in your earlier answer.*
>
> *A. As no record is being properly maintained, I am unable to produce the same. These receipts are mostly for the additional works and are used for these works which was evidenced by the material found at…….*

27.5 From the reading of the statement of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy, we cannot infer that any reply was given to explain by any of them explaining different print out of Annexure A/KMR/RES/01. For the above said purposes, we are reproducing hereinbelow Q.11 and its reply given by Kolla Madhav Abhilash, Director, which is to the following effect :

Q11. I am now showing you a print out of a picture extracted from your phone (Apple R) bearing the number (9553066666) which is seized vide page No.1 of Annexure- A/ICMR/RES/01. Please explain the contents of the note.

A. I confirm that it is a printout taken from my phone which contains six columns. These details pertain to the project luxuria. This is a list of 25 villas already sold out wherein registration have been completed in respect of some villas. The total receipts on account of the sale of these villas is Rs. 117.91 crores. However, it includes both cheque payments as well as some cash component is also there which is received to meet the cost of some extra work as per the choice of the buyer. The cash received is used for additional work and the payments are made in cash only. However, we have not maintained the proper record for the cash receipts and expenditures in the books of accounts of the company.

27.6 The reading of the ld.CIT(A), more particularly, Paragraph 65, pages 62 to 72, making it abundantly clear that he had made the addition on the basis of conjectures and surmises and presumptions that the money was paid by the assessee to the developer and both were in tandem to conceal the expenditure incurred for interior work. The above said understanding of ld.CIT(A) is contrary to the elementary understanding of the contract between the parties. As per the agreement of sale and contract for completion of work, it is for the developer to execute the specific work mentioned in the sale agreement and it is for the developer M/s. KMR Estates and Builders Pvt. Ltd to maintain the books of accounts, bills and vouchers for the work done in the villa. In our view, once the assessee has paid for specific work through banking channel, then the assessee cannot be charged on the basis of non-maintenance of books of accounts, bills and vouchers. The tax liability cannot be shifted to the consumer / assessee before us. As the developer failed to maintain and produce the bills and vouchers to the satisfaction of the Revenue, therefore, the developer M/s. KMR Estates and Builders Pvt. Ltd had gone before settlement commission for the above said reason. Hence, there was no reason for making the additions in the hands of the assessee.

27.7 Ld.CIT(A) had wrongly presumed on Page 70 on words that assessee can be identified with villa as how much cash was received and how many cheques were received by the company were duly mentioned in the registered document. In our view, this finding of fact was wrongly recorded by the ld.CIT(A) as the Annexure A/KMR/RES/01 cannot be decoded based on the registered document. The Revenue Authority is duty bound to identify with the help of Annexure A/KMR/RES/01 only and the external aid of the registered document is not permissible. Assuming for a minute, the Revenue can take the help of the registered document, the same is not feasible in the present set of appeals as out of the total 25 villas, 10 were registered after the date of search and the registration of 7 villas are yet to take place. We may fruitfully rely upon the Chart submitted by Revenue in this regard, which is reproduced in the following paragraph. Further, nothing can be inferred on the basis of Annexure A/KMR/RES/01 or a statement, identifying the assessee with the villa. Hence, the presumption of the ld.CIT(A) that Annexure A/KMR/RES/01 is referrable to the assessee before us is only a figment of imagination and based on conjectures and surmises.

27.8. In the case of Dreamcity Buildwell (P.) Ltd. reported in [2019] 110 taxmann.com 28 (Delhi), in the identical facts, Hon'ble High Court of Delhi had deleted the additions with the following reasoning :-

> *"15. It can straightaway be noticed that the crucial change is the substitution of the words 'books of account or documents, seized or requisitioned belongs to or belong to a person other than the person referred to in Section 153A' by two clauses i.e. a and b, where clause b is in the alternative and provides that 'such books of account or documents, seized or requisitioned' could 'pertain' to or contain information that 'relates to' a person other than a person referred to in Section 153A of the Act.*

16. The trigger for the above change was a series of decisions under Section 153C, as it stood prior to the amendment, which categorically held that unless the documents or material seized 'belonged' to the Assessee, the assumption of jurisdiction under Section 153C of the Act qua such Assessee would be impermissible. The legal position in this regard was explained in Pepsi Foods (P.) Ltd. v. Asstt. CIT [2014] 367 ITR 112 (Del)where in para 6 it was held as under:

'6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is -after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section132 (4A) (i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C (1) (i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction'.

17. In the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search 'belongs' to the Assessee. In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee.

18. In the present case, the Revenue is seeking to rely on three documents to justify the assumption of jurisdiction under Section 153 C of the Act against the Assessee. Two of them, viz., the licence issued to the Assessee by the DTCP and the letter issued by the DTCP permitting it to transfer such licence, have no relevance for the purposes of determining escapement of income of the Assessee for the AYs in question. Consequently, even if those two documents can be said to 'belong' to the Assessee they are not documents on the basis of which jurisdiction can be assumed by the AO under Section 153C of the Act.

19. As far as the third document, being Annexure A to the statement of Mr. D. N. Taneja, is concerned that was not a document that 'belonged' to the Assessee. Admittedly, this was a statement made by Mr. Taneja during the course of the search and survey proceedings. While it contained information that 'related' to the Assessee, by no stretch of imagination could it be said to a document that 'belonged' to the Assessee. Therefore, the jurisdictional requirement of Section 153C of the Act, as it stood at the relevant time, was not met in the present case.

20. For the aforementioned reasons, this Court concludes that the ITAT committed no legal error in holding that the AO had wrongly assumed jurisdiction under Section 153C qua the Assessee. The ITAT, rightly, therefore, set aside the order of the CIT (A), which had held the contrary."

28. Moreover, in the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society reported in [2017] 84 taxmann.com 290 (SC) it was categorically held that the incriminating material should belong to the assessee and for the assessment year under consideration in the following manner :

"15. At the outset, it needs to be highlighted that the assessment order passed by the AO on August 7, 2008 covered eight Assessment Years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four Assessment Years, namely, 2000-01 to 2003-04 covered by notice under Section 153C of the Act. There is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.

16. In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17. First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."

29. The perusal of assessment order as well as the order of ld.CIT(A) clearly shows that the Revenue Authority has not even recorded the statement of any of the flat buyers and has not confronted the incriminating material to them. Admittedly, the assessee before us has denied having made any cash payment to the M/s. KMR Estates and Builders Pvt. Ltd or to Shri Kolla Madhava Reddy. The finding of the Assessing Officer is hinging on the admission made by the company before the Settlement Commission and its binding nature u/s 245D(4) of the Act.

30. In our considered opinion, the order of the lower authorities, is not sustainable as neither the statement of the assessee was recorded by the Assessing Officer nor was the incriminating material confronted nor the said documents were forming part of the satisfaction recorded by the Assessing Officer. Besides the above, the reliance on the settlement by M/s. KMR Estates and Builders Pvt. Ltd before the Settlement Commission cannot be a ground to fasten the liabilities on the assessee in terms of the scheme of the Income Tax Act, 1961. Section 245C, 245D and 245I of the Act provide as under :

> *245C.9394[(1) An assessee may, at any stage of a case relating to him95, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the 96[Assessing] Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :*

97[Provided that no such application shall be made unless,—

(i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees, 98[(ia)
in a case where—

(A)the applicant is related to the person referred to in clause (i) who has filed an application (hereafter in this sub-section referred to as "specified person"); and

(B)the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated,

the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,]

(ii) in any other case, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees,

and such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.]

98[Explanation.—For the purposes of clause (ia),—

(a)the applicant, in relation to the specified person referred to in clause (ia), means,—

(i) where the specified person is an individual, any relative of the specified person;

(ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession,—

(A) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or

(B) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person;

(b) a person shall be deemed to have a substantial interest in a business or profession, if—

(A) in a case where the business or profession is carried on by a company, such person is, 99[on the date of search], the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(B) in any other case, such person is, 99[on the date of search], beneficially entitled to not less than twenty per cent of the profits of such business or profession.]

(1A) For the purposes of sub-section (1) of this section 1[***], the additional amount of income-tax payable in respect of the income disclosed in an application made under sub-section (1) of this section shall be the amount calculated in accordance with the provisions of sub-sections (1B) to (1D).

2[(1B) Where the income disclosed in the application relates to only one previous year,—

(i) if the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;

(ii) if the applicant has furnished a return in respect of the total income of that year3, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.]

4[(1C) The additional amount of income-tax payable in respect of the income disclosed in the application relating to the previous year referred to in sub-section (1B) shall be,—

(a) in a case referred to in clause (i) of that sub-section, the amount of tax calculated under that clause;

(b) in a case referred to in clause (ii) of that sub-section, the amount of tax calculated under that clause as reduced by the amount of tax calculated on the total income returned for that year;

(c)
5[***].]

(1D) Where the income disclosed in the application relates to more than one previous year, the additional amount of income-tax payable in respect of the income disclosed for each of the years shall first be calculated in accordance with the provisions of sub-sections (1B) and (1C) and the aggregate of the amount so arrived at in respect of each of the years for which the application has been made under sub-section (1) shall be the additional amount of income-tax payable in respect of the income disclosed in the application.

(1E) 6[***]

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed7.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

8[(4) An assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in the prescribed manner9 of having made such application to the said Commission.]245C.[(1) An assessee may, at any stage of a case relating to him95, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the 96[Assessing] Officer, the manner in which such income has been derived, the additional amount of income-tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided :

97[Provided that no such application shall be made unless,—

(i) in a case where proceedings for assessment or reassessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of a person referred to in section 153A or section 153C have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees,

98[(ia) in a case where—

245D. 12[(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:

Provided that where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.]

(1A) 13[Omitted by the Finance (No. 2) Act, 1991, w.e.f. 27-9-1991.]

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the 14[Principal Commissioner or] Commissioner.

15[(2A) Where an application was made under section 245C before the 1st day of June, 2007, but an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, has not been made before the 1st day of June, 2007, such application shall be deemed to have been allowed to be proceeded with if the additional tax on the income disclosed in such application and the interest thereon is paid on or before the 31st day of July, 2007.

Explanation.—In respect of the applications referred to in this sub-section, the 31st day of July, 2007 shall be deemed to be the date of the order of rejection or allowing the application to be proceeded with under sub-section (1).

(2B) The Settlement Commission shall,—

(I) in respect of an application which is allowed to be proceeded with under sub-section (1), within thirty days from the date on which the application was made; or

(ii) in respect of an application referred to in sub-section (2A) which is deemed to have been allowed to be proceeded with under that sub-section, on or before the 7th day of August, 2007, call for a report from the 14[Principal Commissioner or] Commissioner, and the 14[Principal Commissioner or] Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

(2C) Where a report of the 14[Principal Commissioner or] Commissioner called for under sub-section (2B) has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the 14[Principal Commissioner or] Commissioner:

Provided that an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard:

Provided further that where the 14[Principal Commissioner or] Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter without the report of the 14[Principal Commissioner or] Commissioner.

(2D) Where an application was made under sub-section (1) of section 245C before the 1st day of June, 2007 and an order under the provisions of sub-section (1) of this section, as they stood immediately before their amendment by the Finance Act, 2007, allowing the application to have been proceeded with, has been passed before the 1st day of June, 2007, but an order under the provisions of sub-section (4), as they stood immediately before their amendment by the Finance Act, 2007, was not passed before the 1st day of June, 2007, such application shall not be allowed to be further proceeded with unless the additional tax on the income disclosed in such application and the interest thereon, is, notwithstanding any extension of time already granted by the Settlement Commission, paid on or before the 31st day of July, 2007.]

16[(3) The Settlement Commission, in respect of—

(i) an application which has not been declared invalid under sub-section (2C); or

(ii) an application referred to in sub-section (2D) which has been allowed to be further proceeded with under that sub-section, may call for the records from the 17[Principal Commissioner or] Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the 17[Principal Commissioner or] Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case, and the 17[Principal Commissioner or] Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission:

Provided that where the 17[Principal Commissioner or] Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under sub-section (4) without such report.

(4) After examination of the records and the report of the 17[Principal Commissioner or] Commissioner, if any, received under—

(i) sub-section (2B) or sub-section (3), or

(ii) the provisions of sub-section (1) as they stood immediately before their amendment by the Finance Act, 2007, and after giving an opportunity to the applicant and to the 17[Principal Commissioner or] Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the 18Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the 17[Principal Commissioner or] Commissioner.

(4A) The Settlement Commission shall pass an order under sub-section (4),—

(i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008;

(ii) in respect of an application made on or after the 1st day of June, 2007 19[but before the 1st day of June, 2010], within twelve months from the end of the month in which the application was made;]

20[(iii) in respect of an application made on or after the 1st day of June, 2010, within eighteen months from the end of the month in which the application was made.]

21[(5) Subject to the provisions of section 245BA, the materials brought on record before the Settlement Commission shall be considered22 by the Members of the concerned Bench before passing any order under sub-section (4) and, in relation to the passing of such order, the provisions of section 245BD shall apply.]

(6) Every order passed under sub-section (4) shall provide for the terms of settlement23 including any demand23 by way of 24[tax, penalty or interest23], the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

245I - *Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided59 in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."*

31. As per the above provisions, the assessee (specified person) is required to move an application for settlement u/s 245C of the Act, giving the full and true disclosure of his income, the manner in which such income has arrived. In the application, the assessee is required to disclose as to whether the application pertains to only one previous year or to more than one last year and he is required to give the details of the additional amount of income tax payable in respect of the income disclosed for each of the years as per clauses 1B, 1C and 1D of Section 253C of the Act. After receipt of the said application the Settlement Commission, after examining the records and report of the Principal Commissioner / Commissioner on the application of the assessee in accordance with section 254D of the Act. Thereafter, the Settlement Commission, after affording the opportunity to the applicant / assessee and to the Commissioner pass such order as if he thinks fit on the matters covered by the application. As per section 254I of the Act, such order pass by the Settlement Commission shall be conclusive, and no matter covered by such order shall be the subject matter of any proceedings under the Income Tax Act, 1961.

32. Therefore, it is abundantly clear that the scope of the Settlement arrived at between M/s. KMR Estates and Builders Pvt. Ltd and the Revenue before the Settlement Commission, did not encompass the subject matter of the present proceedings before the Settlement Commission. Hence, the respondent cannot rely upon it. Further, neither the assessee was a party before the Settlement Commission nor he was given any opportunity of representation before the Settlement Commission nor was any order passed by the Settlement Commission on the application of the assessee. Therefore, the Settlement, if any, arrived at between M/s. KMR Estates and Builders Pvt. Ltd and the Revenue before the Settlement Commission is not binding on the assessee or in other words, the Revenue cannot take the help of the said Settlement Order / admission made by M/s. KMR Estates and Builders Pvt. Ltd to fasten the liability on the assessee. The law is fairly settled with respect to the basis on which the addition can be made under section 153C of the Act as neither the statement of Shri Kolla Madhava Reddy and Kolla Madhav Abhilash, Director nor the Settlement Order of the Settlement Commission could be said to be the incriminating documents / evidence for the purpose of making the addition in the hands of the assessee, as these documents would not constitute incriminating documents and do not belong to the assessee or having any bearing on the determination of the total income of the assessee.

Reference of P Anusha for making the addition by the ld.CIT(A)

33. In this regard, the ld.CIT(A) had referred to 3 documents namely, the agreement of sale, sale deed and agreement for completion of the Villa entered between Smt. P. Anusha and the M/s. KMR Estates and Builders Pvt. Ltd. On closure scrutiny of all these three documents referred to by the ld.CIT(A), firstly, it is amply clear that these three documents did not fall in the category of incriminating documents. Secondly, there is no inconsistency or incoherence between these three documents. Thirdly, in the agreement of sale, the total sale consideration to be paid by P. Anusha was Rs.2.25 crores which were to be paid in the manner provided by the agreement of sale. The agreement of sale was to provide a furnished villa to the assessee. However, the sale deed dated 24/05/2018 later on executed by M/s. KMR Estates and Builders Pvt. Ltd in favour of P Anusha was only for an amount of Rs.1.15 crore for a semi-furnished villa. On the same date, M/s. KMR Estates and Builders Pvt. Ltd had entered into an agreement for the completion of villa with P. Anusha wherein the consideration was mentioned at Rs.1.10 crore. In both the agreement of sale and agreement of completion, same specifications were mentioned.

33.1 The agreement of sale was the lumpsum agreement to provide a furnished villa to the said assessee Smt. P. Anusha for Rs 2.5 crore. As M/s. KMR Estates and Builders Pvt. Ltd had only made the sale of semi finished villa therefore remaining obligation as per agreement of sale was to be discharged by way of Completion agreement. Admittedly, the said amount of Rs.1.15 crore was duly mentioned in the agreement for completion of villa, which was paid by

P. Anusha after the deduction of TDS to M/s. KMR Estates and Builders Pvt. Ltd. Thus, in total, the assessee P Anusha had paid a sum of Rs.2.25 crore to M/s. KMR Estates and Builders Pvt. Ltd. The addition made by ld.CIT(A) on the basis of the presumption of paying of 'on money' by drawing strength from the above three documents was totally misplaced and misreading of the above documents. Further, in our humble understanding, these three documents were not recovered from the premises of the searched person and were not incriminating in nature. The plain reading of these three documents do not remotely suggests payment of any 'on money' by the villa owners to the company.

34. Furthermore, in the present case of Shri Hariprasad Reddy Kanipakam, ITA No.20/Hyd/2023, the sale deed was executed by M/s. KMR Estates and Builders Pvt. Ltd in his favour on 18/2/2020, whereas the search was conducted in the case of M/s. KMR Estates and Builders Pvt. Ltd on 4.2.2019. No incriminating document whatsoever was found during the course of search pertaining/belonging the assessee Shri Hariprasad Reddy Kanipakam showing payment of 'on money'. Besides the above, there cannot be any assumption of payment of cash by the assessee, namely Shri Hariprasad Reddy Kanipakam for completing the remaining work after getting the registered sale deed in his favour. The completion of the Villa should happen after the registration of the property. As clear from the agreement of sale, sale deed and completion/ construction agreement that all the payments were made by the assessee through the account payee cheque after deduction of TDS. Hence, no inference can be made in the present case for 'on money' payment.

Reference of Villa Nos.63 and 64 :

35. The ld.CIT(A), at pages 77 to 83 of his order had extensively referred to the cash paid by the villa owner of villa No.63. The ld.CIT(A) had assumed that the villa owner of 63 and 64 had paid the cumulative cash of Rs.5,00,50,000/- by recording as under :

> *"The final cash amount recorded for villa no. 63 and 64 is Rs.2,50,25,000/- each in the seized document table cumulatively recorded as Rs. 5,00,50,000/- in the page no. 1 of Annexure A/KMR/RES/01. Further on verification of bank account statements and books of account in Tally package, it was noticed that an amount of Rs.4,00,00,000/- was received through banking Channel till that date. The registration was done subsequently after the date of Search which would have led to some negotiations registering the same on 03.06.2019 for the above villas. The cheque portion as usual was recorded in the books of account of the company. Whereas the balance amount received in cash was not recorded in the books of account."*

35.1 However, it was stated by Revenue that the excess amount received in cash is towards not only the unaccounted profit of the company but also towards the unaccounted receipt towards the agreed works and customized works mentioned in the sale agreement of villas. For that purpose, relevant portion from the sworn statement of Mr. K. Madhava Abhilash was referred to which is the following effect :

> *"Q13. I am now showing you a print out of picture extracted from your phone (Apple X) bearing the number (9553066666) which is seized and annexed the page No.2 of Annexure-ANAIR/RES/01. Please explain the contents of the note.*

A. I confirm that it is a printout taken from my phone. It is rough working pertaining to the villa No. 63 & 64 and it shows the total value of the both villas. The total value of the villa No. 63 & 64 is Rs. 7,85,00,000/- as per agreement of sale. However, the total value and amounts received for additional works are mentioned in page No. 1 against these villa Nos are final and the amount mentioned of Rs. 7.85 cr is forming part of the total value mention in Page No. 1 of Annexure-A/ KMR/ RES/ 01."

36. From the bare reading of the above said, it is clear that it is the case of the ld.CIT(A) that the said villa owner of 63 had paid the cash of Rs.250,25,000/-. However, if the above-said figures are compared with the figures mentioned in Annexure P1, then it is clear that there is no reference to any cash payment paid by the Villa owner 63. The Annexure P1 is already reproduced hereinabove. Thus, even the assumption drawn by the ld.CIT(A) based on the alleged Annexure P2, is contradicted by Annexure P1. Therefore, it cannot be assumed that any cash payment was made by the villa owner of 63. Further, the ld.CIT(A) cannot paint all the assessee/villa owners with the same brush and use the document of one villa with that of the others. In the case of the assesse, the registration of property had taken place 18.2.2020 whereas in the case of villa owners 63 & 64, the registration took place on 3.6.2019. In both the cases, the registration of the property took place after the search. In our view, no addition can be made in the hands of any assessee based on Annexure A/KMR/RES/01 and Annexure A/KMR/RES/02, as both the documents are required to be corroborated with the independent evidences. Even the statements of assessees were not recorded by the Assessing Officer. Further, the Assessing Officer had neither provided a copy of the statement of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy and had even not offered the opportunity for their cross-examination.

36.1 We are disturbed with the injudicious finding given by the ld.CIT(A), whereby he had termed the concept of cross-examination of a maker of the statement as a silly argument. In our view, the right to a fair hearing as provided by the Constitution of India and by the Statute are non-negotiable right and cannot be rejected merely by following flimsy reasons. The reasons were given by the ld.CIT(A) while rejecting the submissions of the assessee, are devoid of sound legal reasoning and are required to be rejected. We reject the same. The reasoning is given by the ld.CIT(A) at page 109 of his order is as under :

> *"…….. As a judicial authority, the undersigned is expected to appreciate the documents in toto and the harping of the same by the appellant that it did not pay the unaccounted cash arid it is not even aware of any such thing or cross examination has not taken place is merely trying to find reasons to pretend innocence. It is important to note that the appellant including the villa owners are a party in manipulating the documents by registering semi furnished villas with the SRO and the agreement of sale is for fully furnished villa as per desired specifications. Therefore, the appellant including the villa owners and the developer company are people acting in concert and the agreement of sale and the registered document have signature of both the parties. So to an extent, the concept of cross examination itself is a* ***silly argument*** *when both the parties are acting together and is is also important to note that only the developer was searched and the evidence has been found.*
>
> *The appellant including the villa owners have not furnished any proofs to have incurred the said interiors from their own accounted income. Thus, the issue of cross examination is of no relevance in the present case however, needless to state that it assumes further importance that one of the main accomplice of the appellant, in this effort of tax evasion that is the recipient has admitted the said sum as unaccounted and also offered the same to tax and this is not a case of fiction but a documented fact. The papers seized very clearly establish the unaccounted payments made by villa owners including the appellant and the same have been rightly taxed by the Assessing Officer.'*

36.2. In reply to Question No.13, it was submitted that the total value of Villas 63 and 64 was Rs.7,85,00,000/-, however, in Annexure A/KMR/RES/01 and Annexure A/KMR/OFF/07 mentioned against Villa No. 64, a total value of Rs.1440.5 was mentioned. Thus, the statements of Shri Kolla Madhava Reddy and Kolla Madhav Abhilash, Director, Annexure A/KMR/RES/01 and Annexure A/KMR/OFF/07 are not in conformity with each other and are contradictory in nature. In all cases, before us, there are no incriminating documents against any of the assessees. The only incriminating document relied upon by the Revenue is Annexure P1, P2 and P7. Those 3 documents are dumb documents and it is not possible to correlate any of the assessee with that of making a cash payment to M/s. KMR Estates and Builders Pvt. Ltd. In Annexure P1, the relevant entry pertaining to Villa Nos.63 and 64 are as under :

63	0		0	0	0	0
64	1440.5		940	500.5	490.5	10

Similarly, the relevant entry in Annexure A/ KMR /OFF/ 07 pertaining to Villa Nos.63 and 64 is as under :

Villa No.	Total Value		Agreement Value	Cash Receipt	Receipt	Pending
63	0	0	420	0	0	0
64	1440.5	940	420	500.5	49.5	10

37. From the comparison of the two documents, it is abundantly clear that no cash receipts were made or mentioned either in Annexure P1 or Annexure 7 reproduced hereinabove pertaining to Villa No.63. Further, the total amounts mentioned against the agreement value of Villa Nos.63 and 64 was Rs.420/- each i.e. Rs.840/-. When this amount of Rs.840/- is added to Rs.500.5 it will be equal to Rs.1340.5. Whereas, in the first column, the total consideration mentioned is at Rs.1440.5. Furthermore, the registration in respect of villas 63 and 64, as per the case of Revenue had taken place on 03.06.2019 i.e., after the date of search. Therefore, the registered sale deed of these two villas was not available for making the additions in the hands of the assessee before us.

Amount not received by M/s. KMR Estates and Builders Pvt. Ltd as per Annexure P-1 and 7

37.1 Interestingly, Shri Kolla Madhava Reddy had even surrendered the amount which has not been received by him on behalf of the company. The surrender of amount which has not been received by the company upto the date of search from Villa owners is contrary to commonsense and preponderance of probability. The above said is further clear if we closely examine the Annexure P7 wherein the ld.CIT(A), himself mentioned that various amounts were pending with the Villa owners and were to be paid by them. For ready reference, we are reproducing it hereinbelow :

Villa No.	Total Value		Agreement Value	Cash Receipt	Receipt	Pending
2	350	325	325	25	0	25
3	550	400	392	150	60	90
7	383.5	300	300	83.5	75	8.5
24	450	350	400	100	775	22.5
25	600	450		150	50	100
31	475	235	235	240	220	20
33	442	270	285	172	135	37
56	330	211.54	230	118.46	100	18.46
61	510	466	250	54	0	54
64	1440.5	940	420	500.5	49.5	10
66	600	435		165	100	65
					Total	450.46

38. From the perusal of the above Chart, it is clear that Shri Kolla Madhava Reddy had agreed for settlement of the amount, which has not even been received by the company. The total amount pending towards villa owners would come to 450.46. We fail to appreciate how the amount of 450.46 can be said to be paid by the villa owners to the builder, when as per Annexure P7, the same was pending and yet to be received by M/s. KMR Estates and Builders Pvt. Ltd from the villa owners.

39. Further, if we look into the assessment order, the Assessing Officer had made the addition of Rs.2,50,25,000/- in the hands of the assessee in ITA No.4/Hyd/2023, owner of villa no.63. The basis for making the addition in the hands of the assessee, is unsubstantiated and is contrary to Annexures P1 and 7. In Annexure P1, no cash payment was made by the owner of the villa no 63 and the document, on the face of it, does not refer to any payment of cash. Therefore, the addition cannot be sustained in the hands of the assessee. If we look into the assessment order passed in ITA

No.4/Hyd/2023, it is clear that the Assessing Officer referred to in para 4.4, that the assessee had paid Rs.6,50,25,000/- to the developer (Rs.4,00,00,000/- through bank and Rs.2,50,25,000/- in cash.) The above statement of fact is contrary to Annexure P1 and P7 (seized / incriminating document and document relied upon by the ld.CIT(A)). In Annexure P7, this agreement value had been mentioned as 420/- and the cash has been mentioned as "0", therefore, the whole basis of addition made by the Assessing Officer in the case of ITA No.4/Hyd/2023 was unsubstantiated.

Reliance of the statement of the Shri Kolla Madhava Reddy

40. In this regard, the Assessing Officer had referred to the statement recorded by the Revenue during the course of search on 25.3.2019 wherein the said Director of the company had admitted to having received the cash payment of Rs.29.04 crores. In the said statement, neither the name of the persons nor the date nor the amount has been mentioned. Even in the Annexure P1 which was confronted by the said Director, the necessary requisite information was lacking, for which we had held it as a dumb document. Further, no questions were asked by the Revenue during the search and thereafter from Shri Kolla Madhava Reddy, as to who is the owner of the villa, when the amount was paid in cash or when the property was registered or when the money was paid by the villa owner or some other person for the completion of the villa. No such question was ever asked by the Revenue in the statement recorded of the Director Shri Kolla Madhava Reddy.

41. On the contrary, Kolla Madhav Abhilash, Director, had stated in the statement. "However, we have not maintained the proper record for the cash receipts and expenditure in the books of accounts of the company". In the absence of any specific information or admission by the Director, no addition can be made in the Assessment Year under consideration in the hands of assessee before us. Further, the said statement was not the subject matter of any cross examination by the assessee during the course of the assessment/appellate proceedings. In our view, the statement which was unsubstantiated and was not tested on the anvil of cross-examination, hence incapable of being treated as evidence. As mentioned hereinabove, the said M/s. KMR Estates and Builders Pvt. Ltd had gone for settlement before the Settlement Commission and settled the dues under sec 245D of the I.T. Act for various years, the year-wise declaration of the disclosure made by the company was provided by the Revenue, which we will refer to in the following paragraphs. Even comparing the year-wise addition declared by M/s. KMR Estates and Builders Pvt. Ltd, did not match the additions made in the hands of all villa owners. In view of the above also, the order of the ld.CIT(A) is unsustainable.

42. The ld.CIT(A) at page 75 of his order, referred to the statement of Kolla Madhav Abhilash, Director of M/s. KMR Estates and Builders Pvt. Ltd, wherein he had given a reply to question no.11 to the following effect :

> *"Q.11 I am now showing you print out of a picture extracted from your phone (Apple X) bearing the number (9553066666) which is seized vide page No. .1 of Annexure A/ KMR/ RES/ 01. Please explain the contents of the note.*

A: I confirm that it is a printout from my phone which contains 6 'columns. These details pertain to the project "Luxuria". This is a list of 25 villas already sold out wherein registration have been completed in respect of some villas. The total receipts on account of sale of these villas is Rs. 117.91 crores. However, it includes both cheque payments as well as some cash component is also there which is received to meet cost of some extra works as per the choice of the buyer. The cash received is used for additional works and the payments are made in cash only. However, we have not maintained proper record for the cash receipts and expenditure in the books of accounts of the company."

Thus, the seized document relied upon by the Assessing Officer very clearly ***indicates the amount of cheque and unaccounted cash received from the buyers including the appellant. The document very clearly brings out as to against each villa, how much cash was received and how much cheque was received by the company from the appellant and other villa buyers.***

43. At page 74 of the order, the ld.CIT(A) reproduced the Annexure A/KMR/OFF/7 wherein it is clearly mentioned that the amount of Rs.450.46 was yet to be paid by the villa owners. However, in the statement, he mentioned that 25 villas have already been sold out and registration had been completed in respect of some villas. Further, it was mentioned that the total receipt on account of the sale of these villas is Rs.117.917 crores which includes both cheque, cash and unpaid amount in cash as well. The statement does not inspire confidence and is against the human probabilities and conduct. Firstly, a person will not admit the cash which has not been received and secondly, in many cases which are before us, the registration has taken place subsequent to the date of search. It is highly improbable, beyond human conduct and preponderance of probabilities, that a buyer will pay “on money” for buying the property without getting the property registered in his / her favour. In the present case, the search took place in the case

of M/s. KMR Estates and Builders Pvt. Ltd on 04.02.2019 and in the following ten cases, the registration had taken place after the search, hence, no conclusion can be drawn of payment of 'on money' at the time of registration of the villas.

Sr.No.	Name	Appeal No.	Villa No.	Date of Registration
1	Rama Subba Reddy Kodumula	ITA 37 and 38/Hyd/2023	5	22.06.2019
2	Guduri Venkata Raju	ITA 16 and 17/Hyd/2023	7	27.06.2019
3	Praveena Borra	ITA 5/Hyd/2023	54	08.11.2019
4	Hariprasada Reddy Kanipakam	ITA 20 to 23/Hyd/2023	29	18.02.2020
5	Venkaram Reddy Parige	ITA 18 and 19/Hyd/2023	6	08.07.2021
6	Hari Kishore Reddy Gavireddygari	ITA 4/Hyd/2023	63	03.06.2019
7	Aparna Kalyani Gavireddygari	ITA 3/Hyd/2023	64	03.06.2019
8	Andem Sandhya Reddy	ITA 7/Hyd/2023	3	24.03.2021
9	Padi Karthik Raghupati Reddy	ITA 81 and 82/Hyd/2023	60	27.01.2020
10	Rajesh Kumar Surana	ITA 78/Hyd/2023	65	11.08.2021

44. The revenue had also confirmed the above said fact, in the tabulation filed before us, wherein the following details like villa no, total value, agreement value, cash receipt, receipt pending, date of registration and Assessment Year are given as under :

Villa No.	Total Value		Agreement Value	Cash Receipt	Receipt	Pending	Date of Registration	Asst. year
2	**350**	**325**	**325**	**25**	**0**	**25**		
28	400	300	300	100	100	0	28.06.2017	2018-19
33	442	270	285	172	135	37	28.06.2017	2018-19
61	510	456	250	54	0	54	30.06.2017	2018-19
24	450	350	400	100	77.5	22.5	10.07.2017	2018-19
Total	**2152**	**1701**	**1560**	**451**	**312.5**	**138.5**		
32	375	225	225	150	150	0	24.05.2018	2019-20
4	350	275	250	75	75	0	10.10.2018	2019-20
56	330	211.54	230	118.46	100	18.46	05.11.2018	2019-20
36	600	400	312	200	200	0	29.01.2019	2019-20
Total	**1655**	**1111.54**	**1017**	**543.46**	**525**	**18.46**		
63	0	0	420	0	0	0	03.06.2019	2020-21
64	14405	940	420	500.5	49.5	10	03.06.2019	2020-21
5	290	240		50	50	0	22.06.2019	2020-21
7	383.5	300	300	83.5	75	8.5	27.06.2019	2020-21
54	410	310	276	100	100	0	08.11.2019	2020-21
60	525	375	375	150	150	0	27.01.2020	2020-21
29	379	223	222	156	156	0	18.02.2020	2020-21
Total	**16392.5**	**2388**	**2013**	**1040**	**580.5**	**18.5**		
3	550	400	392	150	60	90	24.03.2021	2021-22
Total	**550**	**400**	**392**	**150**	**60**	**90**		
6	397	197	197	200	200	0	08.07.2021	2022-23
65	675	325	325	350	350	0	11.08.2021	2022-23
Total	**1072**	**522**	**522**	**550**	**550**	**0**		
25	600	450		150	50	100		
30	475	235	392	240	240	0		
31	475	235	235	240	220	20		
34	494	344	307	150	150	0		
50	289.5	207	207	82.5	82.5	0		
66	600	435		165	100	65		
67	0		825					
Total	**2933.5**	**1906**	**1966**	**1027.5**	**842.5**	**185**		

45. The Revenue in the written submissions had taken the incoherent and inconsistent stands after reference to the order of ld.CIT(A) with respect to receipt of 'on money'. To buttress the above, we would like to reproduce some of the contradictions in the submissions made after relying upon the order of ld.CIT(A) which are as under :

"At page 2 of the Written Submissions, it was mentioned as under :

The modus operandi involved was of registering the Villa in the name of the buyer at a lesser cheque amount and taking the balance amount in unaccounted cash from the buyer. Thus recording the sale value of villa at a lesser price than actually received. The company was registering the villas at the cheque amount almost equivalent to SRO value and the balance which was taken in unaccounted cash was kept outside the books of accounts."

At page 3 of the Written Submissions, it was mentioned as under :

The documents so seized and which are brought out in subsequent paragraphs lead to a conclusion that the unaccounted cash received namely on two counts, first being the unaccounted cash with regard to the purchase of the villa pocketed as unaccounted profit by the company and second for getting the specific works done as per the regular and customized specifications. The above factum of specifications is a phenomena which is relevant to all the villas in the seized sheet, wherein there was a component of transaction of unaccounted cash.

At page 8 of the Written Submissions, it was mentioned as under :

The quantum of the unaccounted cash received by the company in certain cases has also been utilized for the additional works done as reflected in the seized document. The core document mentions the amount of cash paid by the appellant including the villa owner. One of the document pertaining to villa no 63 which was seized in page no 2 of Annexure A/KMR/RES/01 is reproduced as under : (Ref to Page 82 of 121 of CIT(A) order).

46. From the reading of the submissions of Revenue, it is clear that the stand of the Revenue is inconsistent, as at one place, Assessing Officer / ld.CIT(A) alleges that 'on money' was paid at the time of registration whereas on other places, it is the case that 'On money' was paid for carrying out interior work. As per the Chart furnished by the Revenue, reproduced hereinabove, sale deed was registered in respect of 10 villas after the date of search, and qua 7 villas, no sale deed has been registered. Hence, it is highly improbable and incongruous to assume payment of 'on money' to the developer. Revenue should be precise and certain in its allegations whenever it is taxing any citizens on the basis of the allegation of payment of 'on money' i.e., whether it was paid by assessee at the time of registration or at the time of completion of villas, as it will signify and determine the year of taxation and liability. In our view, the incriminating document on the face of it should be able to demonstrate the evasion of taxes relatable to the year of taxation. Further, the Revenue had failed to produce any evidence showing that the payment of any 'on money' by any of the assessees before us. The Revenue had failed to discharge the basic and primary duty even to examine the assessees before us in accordance with the law to find out whether any 'on money' was paid by them to the developer company i.e., M/s. KMR Estates and Builders Pvt. Ltd or not. In the light of the above, no addition can be made in the hands of the assessee only on the basis of conjectures, surmises, presumptions or hypotheses. The addition should always be made on the basis of cogent, incriminating and admissible evidence pertaining to the years under consideration and it should belong to the assessees.

47. The ld.CIT(A) relied upon the statement of Kolla Madhav Abhilash, Director of the M/s. KMR Estates and Builders Pvt. Ltd. The ld.CIT(A) had further referred to the Annexure A/KMR/ OFF/07 which was not referred to by the Assessing Officer while making the addition in the hands of the assessee. As mentioned hereinabove, there is no co-relation between the figures mentioned in Annexure A/KMR/RES/01 and Annexure A/KMR/OFF/07, the discrepancy in the said two documents have been mentioned hereinabove. Further, the Assessing Officer had relied upon the admission of the Managing Director made u/s 132(4) of the Act in their case against the assessee, but failed to note that admission of other parties cannot be considered as conclusive evidence against the assessee, unless there is a corroborative evidence on record. The statement of maker will only bind the maker of that statement, but it cannot bind the others. Similarly, the admission of tax liability by the recipient would not amount to the admission of liability by the payer. The admission of one would not constitute the admission of the other person. For the above said proposition, ld.AR relied upon the decision of Hon'ble ITAT, Visakhapatnam bench in the case of P. Koteswara Rao, Visakhapatnam Vs. DCIT, Central Circle, Visakhapatnam vide ITA No.251 & 252/, Vizag/2012 (Paper Book page. No. 71 to 88) and also the decision of Hon'ble ITAT, Delhi in the case of Vijayashree Food Products Private Limited Vs ACIT vide ITA NO.587/DEL/2019 (Paper Book page. No. 89 to 115). Admittedly, during the assessment proceedings, the assessee had requested the Assessing Officer to provide the opportunity for cross-examination, however, the Revenue Authorities have not provided the opportunity for cross-examination to the assessee.

48. In this regard, the finding of the ld.CIT(A) had held as under :

> *In ground no.2, the appellant has also contended that the Assessing Officer has not followed the principles of natural justice. It is seen from the Assessment Order that the appellant has been given sufficient time and opportunities to present its case, which in evident in the number of hearings given to the appellant, 7 in number. The appellant has not furnished any further information even in the appeal proceedings which it was prevented to submit during the assessment proceedings, therefore this ground is routine and without substantiation. The issue regarding cross-examination has already been elaborately discussed in the preceding paragraphs of the decision and therefore stands rejected. Further, the appellant has not disputed regarding the seized material relied upon by the Assessing Officer which is relevant in its case and the AO is not required to provide the application made by the developer company before Settlement Commission to the appellant. Hence, this ground no.2 of all four appeals does not hold ground and dismissed accordingly.*

48.1 In our humble understanding, the finding of the ld.CIT(A) was contrary to settled principles of law. It is necessary and mandatory to provide the copy of the statement of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy to the assessee before us and it is further, necessary to provide the opportunity for cross-examination to him. This is so necessary as both the persons had not said a word against the assessee of making the cash payments to him at the time of registration or thereafter. Further, it is necessary to bring on record the various contradictions in the order of the Revenue whereby they have wrongly relied upon the statement of these two persons. There are various other reasons for providing the opportunity, however, we have already held that in the absence of incriminating documents, no additions can be made in the hands of the assessee.

48.2. The respondent had failed to appreciate in what context and under what circumstances Shri Kolla Madhava Reddy had made the admission of their liabilities. For the above said purposes, it is essential to read the statement as a whole. We are reproducing hereinbelow the statement, question nos.3 and 4 and their answers given by Shri Kolla Madhava Reddy which are to the following effect :

"Q3. ***I am showing you the statement recorded from you on 05.02.2019 during the course of Search & Seizure operation u/s 132 of I.T.Act at your residence D.No.512/L, Road No.31, Jubilee Hills, Hyderabad wherein in you have given statement to the Questions bearing Nos.52 and 69, The same were reproduced as under. Please go through the same and re-affirm.***

Q52. It is seen from the current status of the project that it is humanly impossible to complete remaining construction within the stipulated date i.e April 2029. The refundable deposit is in the nature of adjustable towards owners share of revenue and not refundable to the developer in the current circumstances. Please state why the refundable deposit should not be treated as your income.

Ans. The project was started in the year 2011. We have harked over possession of the land and original documents and approval from gram panchayat to the developer. The Phase I was envisaged to be completed by April 2019. However due to slump in market demand and the developer failed to complete construction. I agree that there is an inordinate delay in the construction of the project and it now seems that it is humanly impossible to complete the construction of the remaining portion of the project within the stipulated time i.e April 2019. Therefore, both companies namely, M/s. KMR Estates and Builders Put Ltd and M/s. Wincon Housing Pvt Ltd have decided to recognize the income accrued due to the development agreement dated 31.07.2009, for the FY 2018-19 by entering into a suitable understanding/ agreement with the developer.

The land used for Phase 1 given on development in survey No.334 and 335 to the extent of Ac 0.26 guntas belongs to Sh. Lakshma Reddy, in survey no.342 to the extent of Ac 12-14 guntas pertaining to M/s. KMR Estates and Builders Pvt Ltd and in survey no.341 to the extent of Ac5-20.5 belongs to M/s. Wincon Housing Put Ltd. In the case of land belonging to Sh. Laxma Reddy, ,the company M/s. KMR Estates and Builders Pvt Ltd has actually purchased and the said land was shown it in its balance sheet of the company regularly. The profit on account of this development agreement, in case of Mr. T. Laxma Reddy will be recognized in the hands of M/s. KMR Estates and Builders Put Ltd. Accordingly, the income arising out of this development agreement is as below.

	KMR EBPL	*WHPL*
Sale proceeds of land	*67,55,62,357*	*28,64,37,643*
Less : Cost of acquisition of land, development, permissions, fee and other incidental expenses	*18,82,43,214*	*98,38,835*
Income from Phase 1	*48,73,19,143*	*27,65,98,808*

Q69. Do you want to say anything?

Ans: I am once again confirming that on account of development agreement M/s. Janapriya Township Pvt Ltd, M/s. KMR Estates & Builders Pvt Ltd recognizing revenue of an amount of Rs. 48,73,19,143 for the AY 2019-20 and Rs. 27,65,98,808 in the hand of M/s. Wincon Housing Put Ltd which is as per books of accounts.

We also admit additional income in the hands of M/s. KMR Estates & Builders Pvt Ltd of Rs. 23.48 crore (For AY 2019-20, we have already made a provision for the profit to the extent of Rs. 6.16 Crores for the purpose of advance tax. The balance amount of Rs. 4.88 Crore is the additional income offered for the AY 2019-20. Hence 29.64-6.16 would be 23.48) on account of sale proceeds including cash receipts from Luxuria project villas in various assessment years as mentioned in answer to Q12 of my elder son Sri Kolla Madhava Abhilash statement recorded on 05.02.2019.

With regard to the income offered on account of development agreement, we shall enter into a suitable MOU/ agreement with M/s. Janapriya Township Pvt Ltd. The same shall be submitted within 15 days. We shall also submit relevant affidavits admitting the income as stated above. We shall file returns of income offering income as stated above and pay taxes accordingly. Therefore, we request you not to initiate penalty and prosecution proceedings.

Ans: I have gone through the sworn statement given by me on 05.02.2019 during the course of Search & Seizure action conducted u/s 132 at my office M/s M/s. KMR Estates and Builders Pvt. Ltd Estates and Builders Pvt. Ltd., Plot No. 1175, Road No.56, Jubilee Hills, Hyderabad and I hereby re-affirm that I have admitted an additional income of Rs.29.64 cr on account of additionpi cash receipts received (For AY 2019-20, we have already made a provision for the profit to the extent of Rs. 6.16 Crores for the purpose of advance tax. The balance amount of Rs. 4.88 Crore is the additional income offered for the AY 2019-20. Hence, the additional income would be Rs.23.48 cr [29.64-6.16]) and Rs.48,73,19,143/- on account of income received against the development agreement entered with M/ s. Janapriya Township Pvt. Ltd in the hands of M/s.KMR Estates & Developers Pvt.Ltd for the A.Y.2019-20. Further, I have also admitted an additional income of Rs. 27,65,98,808/- on account of income received from the development agreement entered with M/s. Janapriya Township Pvt Ltd in the hands of M/s.Wincon Housing Pvt .Ltd for the A.Y.2019-20.

Q4. I am showing you the statement recorded from your elder son Sri Kolla Madhava Abhilash on 05.02.2019 during the course .of Search & Seizure operation u/s 132 of I.T.Act at your residential premises Plot No.512/L. Road No.3I, Jubilee Hills, Hyderabad wherein he has given answer to the Question bearing No.11, 12 and 34. The same was reproduced as under. Please go through the same and re-affirm.

> ***Q11. I am now showing you a print out of a picture extracted from your phone (Apple R) bearing the number (9553066666) which is seized vide page No.1 of Annexure- A/ICMR/RES/01. Please explain the contents of the note.***
>
> *A I confirm that it is a printout taken from my phone which contains 6 columns.* ***These details pertain to the project luxuria. This is a list of 25 villas already sold out wherein registration have been completed in respect of some villas****. The total receipts on account of sale of these villas is Rs. 117.91 crores. However, it includes both cheque payments as well as some cash component is also there which is received to meet cost of some extra works as per the choice of the buyer.* ***The cash received is used for additional works and the payments are made in cash only.*** *However, we have not maintained proper record for the cash receipts and expenditure in the books of accounts of the company.*

Q12. Please give the details of cash received from the buyers and payments made to meet the expenditure in cash as stated by you in your earlier answer.

A As no record is being properly maintained, I am unable to produce the same. These receipts are mostly for the additional works and are used for these works which was evidenced by the material found at the site office. In fact, the additional expenses incurred have not been maintained properly. M/s KMR Estates and Builders Put Ltd. has been offering profit at 22% on its receipts as per the books of account. ***Keeping in view the lapses in maintenance of bills/ vouchers and other deficiencies, the company has come forward to estimate the profit at 30% on the total receipts as per the details given below:***

Assessment. Year	*Total Receipts*	*Total profit @ 30%*	*Profit already declared in the ROIs*	*Addl. Income to be offered*
2016-17	*3.01*	*0.903*	*0*	*0.903*
2017-18	*28.08*	*8.42*	*0*	*8.42*
2018-19	*50.02*	*15.01*	*5.73*	*9.28*
2019-20	*36.80*	*11.04*	*-*	*11.04*
total	*117.91*	*35.37*	*5.73*	*29.64*

Out of the additional income admitted for AY 2019-20, we have already made a provision for the profit to the extent of Rs. 6.16 Crores for the purpose of advance tax. The balance amount of Rs. 4.88 Crore is the additional income offered for the AY 2019-20. We have accepted the above, keeping in view lapses on behalf of the company in maintaining bills/ vouchers. The company undertakes to take to pay the taxes accordingly. It is further submitted that the above receipts are inclusive of additional receipts. It is also submitted that the total receipts of Rs. 117.91 crores also include Rs. 37.61 crores received in cash towards additional works required to be done by the company which are adjusted proportionately in respective assessment years while estimating the profit."

Q34. Do you want to say anything?

Ans: I am once again confirming that on account of development agreement M/ s. Janapriya Township Put Ltd, M/ s. KMR Estates & Builders Put Ltd recognising revenue of an amount of Rs. 48,73,19,143 for the AY 2019-20 and Rs. 27,65,98,808 in the hand of M/ s. Wincon Housing Pvt Ltd which is as per books of accounts.

We also admit additional income in the hands of M/s. KMR Estates & Builders Put Ltd of Rs. 23.48 crore (For AY 2019-20, we have already made a provision for the profit to the extent of Rs. 6.16 Crores for the purpose of advance tax. The balance amount of Rs. 4.88 Crore is the additional income offered for the AY 2019-20. Hence 29.64-6.16 would be 23.48) on account of sale proceeds including cash receipts from Luxuria project villas in various assessment years as mentioned in answer to Q12 in this statement.

With regard to the income offered on account of development agreement, we shall enter into a suitable MOU/ agreement with M/ s. Janapriya Township Pvt Ltd. The same shall be submitted within 15 days. We shall also submit relevant affidavits admitting the income as stated above. We shall file returns of income offering income as stated above and pay taxes accordingly. Therefore, we request Ayou not to initiate penalty and prosecution proceedings.

Ans: I have gone through the sworn statement given by my elder son Sri Kolla Madhava Abhilash on 05.02.2019 during the course of Search & Seizure action conducted u/s 132 at my residence at Plot No.512/L, Road No.31, Jubilee Hills, Hyderabad and I hereby confirming that that the addition income admitted of Rs.29.64 cr on account of additional cash receipts received (For AY 2019-20, we have already made a provision for the profit to the extent of Rs. 6.16 Crores for the purpose of advance tax. The balance amount of Rs. 4.88 Crore is the additional income offered for the AY 2019-20. Hence, the additional income would be Rs.23.48 cr [29.64-6.161) and Rs.48,73,19,143/- on account of income received against the development agreement entered with M/s. Janapriya Township Pvt. Ltd in the hands of M/s.KMR Estates & Developers Pvt.Ltd for the A.Y.2019-20. Further, I have also admitted an additional income of Rs. 27,65,98,808/- on account of income received from the development agreement entered with M/s. Janapriya Township Pvt Ltd in the hands of M/s.Wincon Housing Pvt .Ltd for the A.Y.2019-20."

49. From the reading of the statement reproduced hereinabove, it is abundantly clear that M/s. KMR Estates and Builders Pvt. Ltd had admitted the additional income on account of "***Keeping in view the lapses in the maintenance of bills/ vouchers and other deficiencies, the company has come forward to estimate the profit at 30% on the total receipts as per the details given below*** *:*

Assessment. Year	*Total Receipts*	*Total profit @ 30%*	*Profit already declared in the ROIs*	*Addl. Income to be offered*
2016-17	*3.01*	*0.903*	*0*	*0.903*
2017-18	*28.08*	*8.42*	*0*	*8.42*
2018-19	*50.02*	*15.01*	*5.73*	*9.28*
2019-20	*36.80*	*11.04*	*-*	*11.04*
total	*117.91*	*35.37*	*5.73*	*29.64*

50. In the statement Shri Kolla Madhava Reddy, he had not given the details of cash received from individual villa owners on the other hand the admission was made on account of lapses in the maintenance of bills/ vouchers and other deficiencies. Hence, it is clear that the admission was on account of ***lapses in the maintenance of bills/ vouchers and other deficiencies.*** Further, we are of the opinion that once M/s. KMR Estates and Builders Pvt. Ltd had disclosed only an amount of Rs.0.903 crores in the assessment year 2016-17, 8.42 crores in the assessment year 2017-18, 9.28 crores in the assessment year 2018-19 and 11.04 crores in the assessment year 2019-20 than the Assessing Officer cannot add different additions in the hands of 20 assessee for the Assessment Year 2016-17 to 2019-20. The details of additions made in the hands of individual assessee in various assessment years are as under :

Sl. No.	Villa No	ITA No & Name of the Assessee	Addition in A.Y. 2016-17	Addition in A.Y. 2017-18	Addition in A.Y. 2018-19	Addition in A.Y. 2019-20
1	64	3/Hyd/2023 Gavireddy Aparna Kalyani, Anantapur			2,50,25,000	
2	63	4/Hyd/2023 Gavireddy Harikishore Reddy			2,50,25,000	
3	36	5/Hyd/2023 Isanaka Masthan Reddy				2,00,00,00,000/-
4	54	6/Hyd/2023 Borra Praveena				1,00,00,00,000/-
5	3	7/Hyd/2023 Andem Sandhya Reddy				1,50,00,00,000/-
6	33	8 & 9/Hyd/2023 Ballela Sai Sree, Nellore	67,05,653	1,04,94,347		
7	24	10 & 11/Hyd/2023 Smt. Garudapalli Sruthi Gupta.		6,83,527	43,16,473	
8	24	12 and 13/Hyd/2023 Sanjay Garudapalli, husband of G. Sruthi Gupta		6,83,527	43,16,473	
9	4	14 and 15/Hyd/2023 Tricities Security and Allied Services Pvt. Ltd, Hyderabad		57,63,889	17,36,111	
10	7	16 & 17/Hyd/2023 Guduri Venkata Raju			65,04,211	18,45,789
11	6	18 & 19/Hyd/2023 Parige Venkat Ram Reddy			25,42,373	1,74,57,627
12	29	20 to 23/Hyd/2023	77278	4238128	9593581	1691013
13	32	24 to 26/Hyd/2023 P. Anusha		50,00,000	66,66,667	33,33,333
14	5	37 and 38/Hyd/2023 Rama Subba Reddy			42,10,526	7,89,474

15	28	44 to 46/Hyd/2023 Vamsi Krishna Reddy Goteke	24,29,589	45,93,553	29,76,858	
16	56	75 to 77/Hyd/2023 Saritha Agarwal, Hyderabad	24,14,842	53,58,613	40,72,545	
17	65	78/Hyd/2022 Rajesh Kumar Surana				3,50,00,000
18	61	79 and 80/Hyd/2022 Sainath Reddy Pady, Hyderabad		18,58,270	8,41,731	
19	61	81 & 82/Hyd/2023 Kaushik Reddy Padi, Hyderabad		18,58,270	8,41,731	
20	60	83/Hyd/2023 Karthik Raghupati Reddy				1,50,00,000
		Total:	**1,16,27,362**	**4,05,32,124**	**9,86,69,288**	**11,94,06,709**
		Total				**27,02,35,483/-**

51. Besides the above 20 Villas, there are 5 more villas, the details of which are not available on record. In the Written Submissions, the Revenue on page 11 had mentioned as under :

> *"Thus, the receipt of cash has been admitted and offered as income by the recipient company. The company has filed the Assessment Year wise chart, gross receipts of the company towards sale of Luxuria Villas and additional income admitted after considering 30% profit of Rs.29,03,21,366/ by including the receipts through cash as per the seized paper of Rs 37,61,00,000/- The additional income admitted by the company on total gross receipts is repro*duced as under :

	Total receipts	*Receipts through Bank*	*Receipts through cash*	*Total profit @ 30%*	*Profit already declared in the ROIs*	*Addl. Income to be offered*
TOTAL	*1158654873*	*782554873*	*376100000*	*347596461*	*57275095*	*290321366*

> *It is important to note that the recipient company opted to file a petition in settlement commission and has offered income on the basis of 35% of the in gross receipts including cash and cheque.*

The developer company in its Settlement Application declared the income for the above period as follows

	Total receipts	*Receipts through Bank*	*Receipts through cash*	*Total profit @ 35% Rs.*	*Profit already declared in the income returned Rs.*	*Addl. Income to be offered Rs.*
TOTAL	*1161846358*	*785650358*	*376196000*	*406646226*	*173075095*	*233571131*

On comparing the declaration and the Settlement application filed by the developer company M/s. KMR Estates & Builders Pvt. Ltd, it is observed that the company has admitted the almost same cash receipt of Rs 37,61,96,000/- a sum which is Rs.96,000/- higher than the seized material. Also, the company has offered more income @35% of total receipts in the Settlement Application being 5% more than the 30% admitted earlier."

52. The above said submission of the Revenue does not match with the return of income filed u/s 153A of the Act and the additional income declared before ITSC, the details of which were provided to us by the Revenue, we are referring the same in the following paragraph of this order.

53. The comparison of the income admitted by M/s. KMR Estates and Builders Pvt. Ltd in the statement given at the time of search with respect to various assessment years and the addition made in the hands of twenty assessees before us for the various years is as under :

A.Y.	Admission as per M/s. KMR Estates and Builders Pvt. Ltd in their statement dt.04.02.2019	Addition as per Assessing Officer in the hands of assessee before us
2016-17	0.903	1,16,27,362
2017-18	8.42	4,05,32,124
2018-19	9.28	9,86,69,288
2019-20	11.04	11,94,06,709

54. From the reading of the comparative statement, it is abundantly clear that the Assessing Officer had made the addition in the hands of each assessee without considering whether any 'on money' was paid by them or not or in which year the said money was paid. It is mandatory for the Assessing Officer to point out in the satisfaction recorded u/s 153C of the Act whether any 'on money' was received in the said assessment year or not. Revenue had nor brought out any evidence suggesting any incriminating material for that assessment year co-relating with payment of 'on money' based on which the additions were made. Quite contrary to the above, there was no co-relation between the addition made in the hands of the assessee, the seized document and the admission made by M/s. KMR Estates and Builders Pvt. Ltd in their statements recorded on 04.02.2019. Pursuant to our direction, the Revenue had filed the statement of the income returned u/s 139/153A of the Act and income offered before the Income Tax Settlement Commission. The tabulation of year-wise declaration made by M/s. KMR Estates and Builders Pvt. Ltd is as under :

Abhilash, Director

4) Yearwise declared made by M/s.KMR Estates and Builders Pvt. Ltd. before the Settlement Commission as under :

A.Y.	Income returned u/s.139/153A	Addl.Income offered before ITSC	Further additional income brought to tax	Aggregate total income
2013-14	1,96,38,010	Nil	4,00,00,000	5,96,38,010
2014-15	1,74,26,680	Nil	4,00,00,000	5,74,26,680
2015-16	1,26,03,870	Nil	4,00,00,000	5,26,03,870
2016-17	Normal 86,19,270 115JB 1,57,29,590	1,00,71,551	4,00,00,000	5,86,90,821
2017-18	62,95,100	9,36,60,499	4,00,00,000	13,99,55,599
2018-19	4,46,09,230	10,95,39,812	4,00,00,000	19,41,49,042
2019-20	58,44,73,000	2,02,99,269	(-24,00,00,000) + 39,41,635	36,87,13,904
Total	69,36,65,160	23,35,71,131	39,41,635	93,11,77,926

Yours faithfully,

(Ravi Chakravarthy B)
Asst. Commissioner of Income-tax,
Central Circle-2(3), Hyderabad.

Encl : As above

55. The reading of the income offered in the return of income by M/s. KMR Estates and Builders Pvt. Ltd, additional income offered before ITSC clearly mismatches with the additions made in various years. For example, in the year 2017-18, the income returned by M/s. KMR Estates and Builders Pvt. Ltd was Rs.62,95,100/- and the additional income offered before Income Tax Settlement Commission was Rs.9,36,60,499/- and additions made in the hands of the assessees, villa owners (20 before us), by the Assessing Officer was Rs.4,05,32,124/-. Similarly, for A.Y. 2018-19, M/s. KMR Estates and Builders Pvt. Ltd was Rs.4,46,09,230/- and the additional income offered was Rs.10,95,39,812/-, whereas, the additions made in the hands of the assessees, villa owners (20 before us), by the Assessing Officer was Rs.9,86,69,288/-. Lastly, for A.Y. 2019-20 the income returned by M/s. KMR Estates and Builders Pvt. Ltd was Rs.58,44,73,000/- and the additional income offered before ITSC was Rs.2,02,99,269/-. As against the above said additional income of Rs.2,02,99,269/-, the Assessing Officer had made the addition in the hands of assessee to the tune of Rs.11,94,06,709/-.

55.1 In the light of the above, it is abundantly clear that the approach of the Assessing Officer was incoherent and was not based on any incriminating material with respect to various assessment years. There was no occasion to make the different additions in different years on prorate basis, when no specific evidence was found from the premises of the Builder showing alleged payment of 'on money' by the villa owners in various assessment years. At the risk of repetition, we may again emphasize that for the purpose of making the addition u/s 153C of the Act, it is essential that the incriminating material should pertain to the assessment year under

consideration. In the present case, neither there is any incriminating material nor there is any year specific incriminating material on the basis of which the addition can be made. The addition of tax liability on the assessee cannot be made on deeming or presumption basis rather the addition can only be made on the basis of incriminating evidence relevant to assessment year showing evasion of taxes under section 153C of the Act.

56. We have the occasion to examine the satisfaction note reproduced by the ld.CIT(A) in his order. In some of the cases, against one villa number, the additions were made in the hands of two individuals. In respect of Villa No.61, the additions were made in the hands of Sainath Reddy in ITA No.79 and 80/Hyd/2023 for a sum of Rs.18,58,270 for A.Y. 2017-18 and Rs.8,41,731/- for A.Y. 2018-19. Similar additions were made in the hands of Kaushi Reddy Padi in ITA No.81 and 82/Hy/2023 for A.Y.s 2017-8 and A.Y. 2018-19. In the same way, in respect of Villa No.24, the additions were made in the hands of Smt. Garudapalli Sruthi Gupta in ITA Nos.10 & 11/Hyd/2023 for A.Y.s 2017- 18 for Rs.6,83,527 and for A.Y. 2018-19 for Rs.43,16,473/-. Similar additions were made in the hands of her husband Sri Sanjay Garudapalli in ITA Nos.12 an 13/Hy/2023.

57. The satisfaction notes are required to be examined on stand alone basis, with reference to the contents thereof. The Assessing Officer or the ld.CIT(A) cannot expand the scope of the satisfaction by any external aid. In other words, he cannot rely upon the documents in his possession during the post search enquiry. As mentioned hereinabove, only one document namely, Annexure P1 was referred to in the satisfaction note, which was incapable to guide the Assessing Officer in imposing the liability on

the assessee. The said document neither bears the date nor the name nor the year nor the amount when it was paid. In the absence of the specific information pertaining to the assessment year and the assessee, it is impermissible for the Revenue to make the addition in the hands of the assessee. In view of the above, we are of the opinion that the very premises of exercising the jurisdiction u/s 153C is lacking and therefore, the addition made in the hands of assessees before us are required to be deleted.

Electronic Evidence / 65B of the Indian Evidence Act

58. The Assessing Officer in Para 4.6 of his order has referred to the certificate u/s 65B of the Indian Evidence Act issued by the Digital Forensic Examiner during search proceedings. The Revenue had submitted that the seized document was the printout of a picture extracted from the mobile phone of Kolla Madhav Abhilash, Director of M/s. KMR Estates and Builders Pvt. Ltd, which contains the details of payments received in cash from the villa buyers. For the above said purposes, the Certificate u/s 65B was obtained from Digital Forensic Examiner. In this regard, the Revenue had filed the following submissions :

> *Certificate u/s.65B of Indian Evidence Act issued by Digital Forensic Examiner during the search proceedings gives the evidentiary value eventhough it is secondary evidence. The Hon'ble Supreme Court vide its order dated May 04, 2022 in Ravinder Singh @ Kaku Vs State of Punjab has observed that a certificate under Section 65B(4) of the Indian Evidence Act, 1872 is mandatory to produce electronic evidence.*

59. During the course of hearing, we had enquired from the ld.DR as to whether Certificate under 65B was provided to the assessee and if so, copy of the Certificate under 65B be filed before us and whether the said Certificate u/s 65B had been provided to the assessee for cross-examination and reply / response. On our pointed query, the ld.DR had sought the reply from the Assessing Officer / ld.CIT(A).

60. On the other hand, the ld.AR had submitted that no Certificate u/s 65B was provided to the assessee during the assessment proceedings or in the appellate proceedings. Even otherwise it was submitted that the excel sheet retrieved from a third party could not bind the assessee who is unrelated to the Kolla Madhav Abhilash, Director. The assessee had also relied upon the decision in the case of Mr. A. Johnkumar Vs. DCIT in ITA No.3028/Cheny/2019 dated 13.05.2022 wherein at para 9.4 it was held as under :

> *"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."

61. The ld.AR relied upon another decision in the case of ACIT Vs. Manchukonda Shyam in ITA 87/Viz/2020 dt.23.09.2020 wherein the Tribunal at paras 6 and 6.1 has held as under :

"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 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 (whattsapp) 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 low or the 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 Savjtri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)

iii) Jawahar Bhai Atmaram Hathiwala 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)i. Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.

vii) 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 evidences 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 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."

62. We have considered the rival contentions on this issue and also perused the case laws relied upon by both the parties. The Revenue had relied upon the decision of Hon'ble Supreme Court in the case of Ravinder Singh v. State of Punjab, (2022) 7 SCC 581 : (2022) 3 SCC (Cri) 211 : 2022 SCC OnLine SC 541. In the said judgment, the Hon'ble Supreme Court has held as under :

"21. Lastly, this appeal also raised an important substantive question of law that whether the call records produced by the prosecution would be admissible under Sections 65-A and 65-B of the Evidence Act, given the fact that the requirement of certification of electronic evidence has not been complied with as contemplated under the Act. The uncertainty of whether Anvar P.V. v. P.K. Basheer [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] occupies the filed in this area of law or whether Shafhi Mohammad v. State of H.P. [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] lays down the correct law in this regard has now been conclusively settled by this Court by a judgment dated 14-7-2020 in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] wherein the Court has held that : (Arjun Panditrao Khotkar [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1 : (2020) 4 SCC (Civ) 1 : (2020) 3 SCC (Cri) 1 : (2020) 2 SCC (L&S) 587] , SCC pp. 56 & 62, paras 61 & 73).

"61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly "clarified" in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

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73.1. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohammad v. State of H.P. [Shafhi Mohammad v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4)."

22. In light of the above, the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement, for it to be admissible in the court of law. As rightly stated above, oral evidence in the place of such certificate, as is the case in the present matter, cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law."

63. From the reading of the decision of the Hon'ble Supreme Court in the case of Ravindersingh (supra), it is abundantly clear that the law laid down by the Hon'ble Supreme Court in the case of P.K. Basheer occupies the field in the area of law (65A and 65B). In the case of Arjun Panditrao Khotkar, the Hon'ble Supreme Court had reiterated that the Certificate u/s 65B(4) is a condition precedent to the admissibility of evidence by way of an electronic record. Further, in Para 22, the Hon'ble Supreme Court mentioned that the electronic evidence produced before the High Court should have been in accordance with the statute and should have complied with the certification requirement for its admissibility.

64. In the case in hand, before us, the electronic evidence is "the data stored in the mobile phone of Kolla Madhav Abhilash, Director of the company". For the admissibility of the data stored in the mobile phone as evidence, not only the electronic evidence i.e., mobile phone (apple X) and the data both are required to be produced, but along with that the certificate as contemplated u/s 65B(4) is also required to be produced for its admissibility. In the present case, neither the mobile phone nor the evidence in the form of data stored therein was confronted to the assessee nor any certificate u/s 65B(4) were provided to the assessee.

65. In the Digital Forensic Certificate issued by the Examiner it was necessary to provide the various information as contemplated under section 65B of the Act. The Hon'ble Supreme Court had examined this aspect along with the other in the case of *Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Cri)* 24 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (L&S) 108 : 2014 SCC Online SC 732 at page 483, which was later on, approved by the Hon'ble Supreme Court in the case of Ravindersingh @ Kaku (supra). For the convenience, we are reproducing the law laid down by the Hon'ble Supreme Court in the case of P.K. Basheer in the following manner :

> *"12. Section 65-B reads as follows:*
>
> *"65-B.Admissibility of electronic records.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as "the computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*
>
> *(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—*
>
> *(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

These are the provisions under the Evidence Act relevant to the issue under discussion.

13. In the Statement of Objects and Reasons to the IT Act, it is stated thus:

"New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business."

In fact, there is a revolution in the way the evidence is produced before the court. Properly guided, it makes the systems function faster and more effective. The guidance relevant to the issue before us is reflected in the statutory provisions extracted above.

14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

66. In the absence of the primary evidence namely, the electronic evidence and the Certificates issued under section 65B (secondary evidence) by the Digital Forensic Examiner, it is difficult to accept the stand of the Revenue. The Revenue had filed the two certificates under section 65B of the Act from the iPhone 5 registered in the name of Mr. Aravind Reddy and Samsung Galaxy G8 in the name of Srinivas K. Both these certificates are reproduced hereinbelow for ready reference :

--Left intentionally—

CERTIFICATE U/S 65B of THE INDIAN EVIDENCE ACT.1872

I,Mr. Srinivas K (Name) (PAN:AWOPK3253H) State the following that I am an Legal Advisor (Designation) of M/S KMR Estates and Builders Pvt Ltd (Here after Referred to as firm /Company /LLP /AOP /Proprietary Firm) and with Office Premise at 38, Parkview Enclave, Manovikas Nagar, Bowenpally, Secunderabad-500009 (Here after referred to as*Premises).

I state that by virtue of being Director (Designation) in M/S KMR Estates and Builders Pvt Ltd I uses Samsung Galaxy J8 S/N: RZ8K806BV6D (here after referred to as "Laptop/Desktop/Server") located in the premises of 38, Parkview Enclave, Manovikas Nagar, Bowenpally, Secunderabad-500009.

Accordingly, I, Mr. Anto Praveen (Name of Digital Forensic Examiner) Certify that the data is Imaged/backed up from the Samsung Galaxy J8 S/N: RZ8K806BV6D during the Search proceeding U/S. 132 of the Income Tax Act, 1961, in the case of M/S RJC Concrete India Pvt Ltd (Date of Search: 04/02/2019) is stored in the devices with the following details:

Master Copy		Working Copy	
Make : WD	Model: My Passport	Make: Seagate	Model: Backup Plus
Sr.No: WX51A683XJTN		Sr.No: NA9V7WK1	
Hash MD5: 342903e0ec8876a4a5f5ba7611775634			
Hash SHA1: 677249fb9570bc06e9ad83113280ba718cde253e			

I certify that above data backup is a true and identical copy/reproduction of electronics record which was regularly fed in the Samsung Galaxy J8 S/N: RZ8K806BV6D Server/System/Hard Drive/ Pendrive.

This certificate, therefore, is sufficient compliance of section 65B of the Indian evidence ACT, 1872.

Signature Party: 6/2/19.

Name: Mr. Srinivas K

Signature:

Name: Anto Praveen

(Digital Forensics Examiner)

AO: Brijendra. 06/02/2019

W1: 06/02/2019

W2: 6-2-19

CERTIFICATE U/S 65B of THE INDIAN EVIDENCE ACT.1872

I, Mr. Aravind Reddy (Name) (PAN:AIIPR5278B) State the following that I am an Director (Designation) of M/S KMR Estates and Builders Pvt Ltd (Here after Referred to as firm /Company /LLP /AOP /Proprietary Firm) and with Office Premise at 38, Parkview Enclave, Manovikas Nagar, Bowenpally, Secunderabad-500009 (Here after referred to as*Premises).

I state that by virtue of being Director (Designation) in M/S KMR Estates and Builders Pvt Ltd I uses iPhone 5 32GB IMEI: 013414000238962 (here after referred to as "Laptop/Desktop/Server") located in the premises of 38, Parkview Enclave, Manovikas Nagar, Bowenpally, Secunderabad-500009.

Accordingly, I, Mr. Anto Praveen (Name of Digital Forensic Examiner) Certify that the data is Imaged/backed up from the iPhone 5 32GB IMEI: 013414000238962during the Search proceeding U/S. 132 of the Income Tax Act, 1961, in the case of M/S RJC Concrete India Pvt Ltd (Date of Search: 04/02/2019) is stored in the devices with the following details:

Master Copy		**Working Copy**	
Make : WD	Model: My Passport	Make: Seagate	Model: Backup Plus
Sr.No: WX51A683XJTN		Sr.No: NA9V7WK1	
Hash MD5: 57b23b7116fa089c888a1d7a8a510042			
Hash SHA1: 0e7c44c6568eae1b6a005f80b387064767910789			

I certify that above data backup is a true and identical copy/reproduction of electronics record which was regularly fed in the iPhone 5 32GB IMEI: 013414000238962Server/System/Hard Drive/ Pendrive.

This certificate, therefore, is sufficient compliance of section 65B of the Indian evidence ACT, 1872.

Signature Party: 6/2/19.

Name: Mr. Aravind Reddy

Signature:

Name: Anto Praveen

(Digital Forensics Examiner)

AO: Brajendra. 06/02/2019

W1: 06/02/2019

W2: 6.2.19

67. From the perusal of the certificates, it is clear that these two certificates produced by the Revenue do not belong to Sri Kolla Madhav Abhilash, Director, of the developer company, **as his phone was an iphone 10 bearing no.9553066666,** which is not appearing in any of these certificates. Further, the Revenue had filed a digital evidence collection form concerning the following computers. However, no certificates u/s 65B had been given in respect of these computers.

Make	Sr.No
Dell	ZIDCCAE5 Size : 1000 GB
Intex	ZIDCCAE5 Size : 500 GB
Intex	Z9AJ6CY Size : 500 GB
IBALL	5VV5YSGT Size : 1000GB

68. The conjoint reading of the certificates produced by the Revenue and the digital evidence collection form, it is abundantly clear that no certificate u/s 65B of Evidence Act was taken by the Revenue for the Mobile Phone of Kolla Madhav Abhilash, Director, from which the alleged incriminating documents namely, Annexure A/KMR/RES/01 and 02 were found and retrieved. In the light of the above, we do not find any reasons to agree with the contention of ld.DR for the Revenue that the evidence retrieved from the mobile phone was required to be accepted and the addition can be made in the hands of the third party. In fact, the decision in the case of Ravindersingh (supra) relied upon by the Revenue supports the case of the assessee and applicable with full force.

68.1. Ironically, ld.CIT(A) had completely given a go by to section 65B of Evidence Act and also to the principles of natural justice in his order at page 113 to the following effect :

> *"In ground no.5, the appellant has contended that the Assessing Officer is not correct in relying on secondary evidence which is admittedly a printout taken from an electronic device contrary to the provisions of section 65B of Indian Evidence Act.* ***It is seen that the Director of developer company has given statement regarding the contents of the evidence found from electronic device during the search proceedings and has admitted that the document is his record.*** *The person with whom such document has been found has not challenged the factum, therefore the appellant challenging the same is completely preposterous and thus stands rejected. Further, the similar and corroborative document containing identical contents was found and seized at the office premises of the developer company. Therefore, there cannot be any such ground which can be remotely entertained. Accordingly, the ground no.5 of all the four appeals is dismissed."*
>
> *(Emphasis supplied by us)*

68.2 The above said finding given by the ld.CIT(A) is against the basic law and principles of natural justice. Admittedly, the admission of the director cannot be the admission of the assessee before us. Moreover, in the absence of the certificate issued u/s 65B of the Evidence Act, the evidence collected by the Revenue cannot be relied on to fasten the liability on the assessee. Hence, we disapprove and set aside the reasoning given by the lower authorities. In the light of the above, the addition cannot be sustained in the hands of the assessee.

69. **The summary of the reasons for deleting the additions are as under :**

a. That the satisfaction note does not mention the year in which the alleged 'on money' was paid by the assessee.

b. The Annexure P1/KMR/RES/01 is a dumb document as it does not give the name, the year and particulars of the assessee.

c. As per Annexure/KMR/OFF/07 the amount of Rs.4.56 crore was yet to be received.

d. No addition can be made on the basis of the statement of a third party u/s 153C of the Act.

e. In more than 10 cases, the registration of the villas have taken place after the search in the case of M/s. KMR Estates and Builders Pvt. Ltd.

f. It is a case of the Revenue that in most of the cases, 'on money' was paid at the time of registration of the property. Whereas as mentioned above in more than 10 cases the registrations have taken place after the search.

g. No addition can be made on the basis of document collected during the post search enquiry in the form of agreement of sale, sale deed and completion agreement.

h. There is no evidence that more interior work has been done in comparison to the specification mentioned in the agreement of sale and completion agreement.

i. No certificates u/s 65B were produced before us in respect to the iphone 10 mobile of Kolla Madhav Abhilash, Director of the developer company, from whose device the said Annexure P1 and P.2 were retrieved and addition was made in the hands of assessee.

j. There is a huge difference between the year-wise additions accepted by M/s. KMR Estates and Builders Pvt. Ltd before the Settlement Commission and the addition made in the hands of the individuals / assessees.

k. None of the assessees were examined by the Assessing Officer or the ld.CIT(A).

l. The assessees were not provided the copy of statements of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy. Further, the assessees were not provided any opportunity to cross-examine these persons based on whose statements the admissions are made in the hands of the assessees.

m. The additions admitted by Kolla Madhav Abhilash, Director during the search and thereafter, before the Settlement Commission were on account of non-maintenance of proper vouchers / bills for carrying out the construction activities by M/s. KMR Estates and Builders Pvt. Ltd and not on account of 'on money'.

n. The Revenue has not issued the notice u/s 153C of the Act for all the six years as required under law in the case of the above assessees.

In view of the foregoing reasons and relying upon the judgments cited supra, the addition is required to be deleted in the hands of the assessee. Accordingly, we delete the addition of Rs.77,278/- in the hands of the assessee for the Assessment Year 2016-17.

70. **In the result, the appeal of assessee in ITA No.20/Hyd/2023 for A.Y. 2016-17 is allowed.**

71. Though, as per section 153C of the Act, the additions were required to be made in respect of six assessment years, however, for the reasons best known to the Revenue, the additions were only made for the assessment years 2016-17 to 2019-20. No separate satisfaction note for each year was prepared by the Assessing Officer, giving the details of cash allegedly paid by the assessees to M/s. KMR Estates and Builders Pvt. Ltd.

72. The assessees have challenged the additions made for A.Ys. 2017-18, 2018-19 and 2019-20 by filing separate appeals bearing Nos.21 to 23/Hyd/2023. In view of the submission of both the parties that the issues raised in A.Y. 2016-17 are identical to the other assessment years, we, for the reasons stated hereinabove while deciding the appeal in ITA 20/Hyd/2023 and for similar reasons, delete the additions of Rs. 42,38,128/-, Rs.95,93,581/-, and Rs.16,91,013/- respectively, for A.Ys. 2017-18 to 2019-20. **Thus, the appeals in ITA Nos.21 to 23/Hyd/2023 are also allowed.**

73. Since identical issues are raised in the remaining captioned appeals, therefore, our finding in ITA No.20/Hyd/2023 would apply mutatis and mutandis to all the remaining capitoned appeals as well. Hence, we delete the additions made in the hands of the assessees, respectively, and allow all the remaining captioned appeals.

74. To sum up, all the appeals of assessees are allowed.

Order pronounced in the Open Court on 28th February, 2023.

Sd/-	**Sd/-**
(R.K. PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 28th February, 2023.
TYNM / SPS

Copy to:

S.No	Addresses
1	All Assessees - C/o M.V. Prasad , Sanath & Rajasekhara, C.As 8-2-120/86/3, Krishna Sindhu Residency, Road No.03, Banjara Hills, Hyderabad 500034
2	ACIT Central Circle 2(3) Hyderabad
3	Pr. CIT- Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File