

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

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

ITA Nos.979 to 983/Bang/2022
Assessment Years: 2014-15 to 2018-19 respectively

Emkay Hindustan Infrastructure D.No.20-1-19/5, Ground Floor Behar Complex, Azizuddin Road Bunder Mangaluru 575 001 PAN NO : AAEFE5746K	Vs.	Deputy Commissioner of Income-tax Central Circle-2 Mangaluru
APPELLANT		RESPONDENT

ITA Nos.733 to 735/Bang/2022
Assessment Years: 2016-17 to 2018-19 respectively

Mr. Ibrahim Kaleel 2 nd Cross Road Manaar, Badria Kandak Mangaluru 575 001 PAN NO : BLHPK9828F	Vs.	Deputy Commissioner of Income-tax Central Circle-2 Mangaluru
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	15.05.2023
Date of Pronouncement	:	16.06.2023

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ORDER

PER BENCH:

These appeals by 2 different assesseees are directed against different assessment orders for the assessment years 2014-15 to 2018-19 in case of M/s. Emkay Hindustan and in case of Ibrahim Khaleel for the assessment years 2016-17 to 2018-19. Since the issue involved in both appeals are common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. First, we will take up appeals in case of Emkay Hindustan in ITA Nos.979 to 983/Bang/2022 for the AYs 2014-15 to 2018-19.

2.1 In this case, there was a search action u/s 132 of the Act in the case of Mr. Ibrahim Khaleel and others and simultaneously survey has been conducted on the premises of various entities including that of Emkay Hindustan Infrastructure (present assessee). During the course of search, various books of accounts, documents, etc., have been seized evidencing contract receipt in cash sales by cheque/RTGS/DD by M/s. Emkay Hindustan Infrastructure from Mr. Ali Kutti, Managing Partner of Creek Developers and Builders for the contract works done for the Creek Galaxy project. The information contained therein pertain to M/s. Emkay Hindustann Infrastructure – present assessee and having a bearing on the determination of total income of the assessee. Seized material A/IK/07 pages 145 to 150 which was found and seized during the course of search u/s 132 of the Act as the premises of Ibrahim Khaleel at Dr.No.20-6-363/1, Mannar, 2nd Cross, Kandak, Mangalore contains the following details:-

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

177
18-07-2017

Statement of Accounts. Site : Creek Galaxy , Pumpwell

Sl.No	Date	Bill No	Description	Amount	Amount
1			Balance	163,843,200.00	140,757,300.00
2			Tax 99777000 x 9%	8,979,930.00	8,979,930.00
3			Old Extra bill approved	6,728,000.00	6,728,000.00
4			Old Extra bill approved	2,150,000.00	2,150,000.00
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11			Extra	4,551,200.00	3,909,925.00
12	15.07.2017	CMT. 01	Cement	813,616.00	
13	15.07.2017	SND 01	Sand	300,164.00	300,164.00
			Total	195,170,548.00	170,629,755.00
			Less		
			99,777,000+49,305,000	149,082,000.00	149,082,000.00
			Last payment	13,545,475.00	13,545,475.00
			Balance	32,543,071.00	8,002,280.00

- 1 Agreement for office
- 2 Agreement for 3 office and 1 flat
- 3 Basement work,+ lift used +conpound wall steel and shuttering +channel for all lift,
- 4 basement labour work

For Emkay Hindustan Infrastructure

2.2 This was confronted to Shri Ibrahim Khaleel who said that he has received an amount of Rs.4,93,05,000/- in cash up to 3.1.2017. This amount is received either from Mr. Ali Kutti or the amount received from the buyers of flat Mr. Ibrahim Khaleel on behalf of Ali Kutti and this amount said to be unaccounted in the books of accounts of the assessee it was stated by Ibrahim Khaleel that he has been marketing the flats and collecting the consideration from the clients with the consent of Ali Kutti. According to the AO this amount has been directly received by Mr. Ibrahim Khaleel as evidenced from page nos.178 to 182 of Annexure A/IK/07. Since Mr. Ali Kutti was a NRI and he lives most of the time abroad and Mr. Khaleel received the amount on his behalf. The statement of Ibrahim Khaleel is reproduced herein below:

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

Q4. During the course of search at your residence on 30.8.2017, certain documents were found seized. I am showing you page No. 178 to 182 of the seized folder A/K/07. Please go through these pages and explain the contents.

Ans: I have gone through these pages and confirm that these papers were seized from my residence during the search. Page No. 182 is a receipt given by me to Mr. Roshan Shameer for Rs. 400000/- in cash. This amount is an installment of flat booked by him in Creek Galaxy, Pumpwell. I have received this amount on behalf of Mr. Ali Kutty of Creek Builders as I was present at the building premises. Page No. 181 is an estimate given to a customer for flat No. 304 in Creek Galaxy. Page No. 180 is a receipt given to Mr. Sheik Nizamuddin for the same flat for Rs. 7 lakhs and signed Mr. Ali Kutty for Flat No. 304 and the amount received in cash. Page No. 179 shows total receipt of Rs. 25 lakhs upto 14.9.2015 for the same flat and is signed by Mr. Ali Kutty.

Q5: Please explain your business relationship with Mr. Ali Kutty of M/s Creek Builders

2.3 Mr. Khaleel also agreed before the investigation team in his sworn statement recorded u/s 132(4) of the Act on 31.8.2017 and u/s 131 of the Act on 6.9.2017 admitting the unaccounted cash receipts as undisclosed income as below:

M/s Emkay Hindustan Infrastructure Order u/s.144 r.w.s.153C A.Y. 2015-16 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023049550(1)

Q.47. Do you have anything else to say.

I agree sir for most of the projects I have involved in Large scale cash transaction. These transactions are entered by me due to inadequate knowledge of the Tax laws. As discussed earlier the total unaccounted receipts from the various projects is as follows :

S.No		Issue	Amount	Assessment years
1.	EMKAY Hindustan Infrastructures	Total unaccounted receipt in the Galaxy Creek project	Rs. 4,93,05,000	2017-18
2	Ibrahim Kaleel (Proprietor)	White shell project- Cash Component of receipts	Rs. 43,23,500	AY 2015-16 to AY 2017
3	EMKAY Hindustan Infrastructures	Creek Galaxy project - Cheque/NEFT/RTGS(8% of the total receipts of Rs.5,55,50,000)	Rs. 44,44,000	AY 2015-16, AY 2016-17 & AY 2017-18
4	EMKAY Hindustan Infrastructures	White Shell project - 8% of Rs. 46,32,000/-	Rs. 3,70,560	AY 2015-16 to AY 2016-17
4	IK Sales Corporation	Returns not filed for AY 2016-17 and AY 2017-18	Rs. 15,00,000	AY 2015-16, AY 2016-17 & AY 2017-18
5	Individual	Unaccounted cash found in the house	Rs. 55,00,000	AY 2017-18
		Total	Rs. 6,54,43,060	

With respect to the unaccounted cash receipts, I have incurred cash expenses also, which I request you to consider while calculating the tax liability as per law. Further, I request you not to levy penalty or any prosecution for the tax evasion hereby indulged. I shall set right all my books of accounts and submit the updated books within 10 days time.


DEPONENT

2.4 Thus Emkay Infrastructure received an amount of Rs.4,93,05,000/- and this has been apportioned in different assessment years as below:

9.4 The year wise breakup of **cash received** by the assessee firm, which admittedly had not been accounted for, by the recipient, the assessee firm with regard to the construction work of Creek Galaxy Project till the date of search is as follows.

Asst. Year	2014-15	2015-16	2016-17	2017-18	Total (in Rs.)
Cash Received	41,00,000	1,04,05,000	2,49,50,000	98,50,000	4,93,05,000

2.5 Further, the AO determined the total contract receipts for the assessment years 2014-15 to 2018-19 as below:

Assessment year	Amount (Rs.)
2014-15	27,51,769/-
2015-16	3,83,62,250/-
2016-17	3,20,99,253/-
2017-18	2,11,47,366/-
2018-19	1,48,25,791/-

2.6 As per seized material, assessee had received Rs.6,88,95,000/- through bank and Rs.3,94,55,000/- as cash from Creek Developers and Builders as on 22.3.2016 and expenditure upto 22.3.2016 are recorded in page 102 of the seized material and AO worked out these details as below:

Creek Bank	-	6,88,95,000/-
Creek Cash	-	3,94,55,000/-
Income from other-		<u>5,25,180/-</u>
		10,88,75,180/-
Expenditure incurred through bank	-	5,76,51,925/-
Expenses	-	1,24,11,897/-
Khaleel direct expenses	-	64,66,947/-
Mukthar	-	4,00,000/-
Khader	-	<u>15,28,000/-</u>
Total expenses	-	<u>7,84,58,769/-</u>
		<u>3,04,16,411/-</u>

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2.7 Further, AO recorded in para 12.3 of the assessment order for assessment year 2015-16 that the expenditures as written above are supported with full and complete date wise details and break up. Page 153 to 176 of the seized item: A/IK/7 contains the date wise complete details of all expenses, other than through the bank, expended, which tallies with the above entry. Further, the seized note book: A/IK/8 with the heading "CREEK GALAXY" contains all the expenditures incurred date wise right from the commencement of the construction work onwards till 5/7/2017. This note books starts with the entry dtd. 31/10/2014 with the opening balance of Rs. 8,99,033/-. This opening balance is taken from page 153 of the seized record A/IK/7. The details of the expenditures incurred till reaching Rs. 8,99,033/- is available in the previous pages of this file. The total expenditure incurred till 18/3/2016, as per the seized record: A/IK/8, page 17 amounts to Rs. 1,24,04,897/-. According to AO, the total expenditure up to 22/3/2016 as mentioned in the income & expenditure account, as per which 'expenses Rs. 1,24,11,897/- tallies and supported with proper supporting evidences. Further, most of the above expenses are liable for disallowance u/s. 40A(3) or 40(a)(ia). Even without considering any such aspects, the net profit ratio is about 28% of the total contract receipts. As per the accounted balance sheet, the assessee has got only very limited liabilities for the above period. If there exists any unaccounted liability, it is for the assessee to include all receipts and liabilities in the return filed u/s. 153C *and to prove the same* as when several opportunities were given. However, the assessee had not done this. The assessee has not even cared to furnish any reply to the statutory notices issued from time to time.

2.8 The Id. AO further observed that the statement has been recorded from Mr. Ibrahim Khaleel on-the total receipt and expenditure incurred up to 22/3/2016. He had stated in the sworn statement where in it was explained that Rs. 10,88,75,180/- was the total receipt till 22/3/2016 and Rs. 7,84,58,769/- is the total expenditure incurred. It was further explained that the payment of Rs. 4 Lakh and Rs. 15,28,000/- represent the payment of commission to Mr. Mukthar and Mr. Khader in connection with mediation between the M/s. Creek Developers and Builders and M/s. Emkay Hindustan Infrastructure and that the above amounts have been paid in cash. Obviously, TDS has not been made on these commission payments and hence provisions of section 40(a)(ia) is applicable on these payments.

2.9 Finally, the AO brought to tax the entire amount of cash receipts and 8% of the unaccounted contract receipts as income of the assessee as below:

Assessment Year	2014-15	2015-16	2016-17	2017-18	2018-19
Total Contract receipt accounted for in respect of Creek Galaxy project (including TDS, VAT,ST etc)	27,51,769	3,83,62,250	3,20,99,253	2,11,47,376	1,48,25,791
CASH received outside the accounts (Total: Rs. 4,93,05,000)	41,00,000	1,04,05,000	2,49,50,000	98,50,000	0
Total Receipts	68,51,769	4,87,67,250	5,70,49,253	3,09,97,376	1,48,25,791
Net Profit estimated out of cash receipts -100% - as stated above	41,00,000	1,04,05,000	2,49,50,000	98,50,000	0
Net Profit estimated out of receipts by way of cheque/RTGS etc - at the rate of 8%	2,20,142	30,68,980	25,67,940	16,91,790	11,86,063
Disallowance of Interest on capital & remuneration - proviso to section 44AD(2) omitted	NA	NA	NA	2,75,918	15,0,000
Net Income estimated from contract business	43,20,142	1,34,73,980	2,75,17,940	1,18,17,708	13,36,063
Less: Income disclosed in the return u/s. 153C	80,697	6,36,835	6,41,297	33,945	0
Addition made	42,39,445	1,28,37,145	2,68,76,643	1,17,83,763	13,36,063

2.10 Against this assessee is in appeal before us by way of following grounds common in all these assessment years only changes in figures

1. *“The learned CIT(A)-2, Panaji erred in Passing the Order in the manner he did.*
2. *The 'learned CIT(A)-2, Panaji is not justified in law in upholding the Assessing Officer's action of out-rightly disallowing both the income as well as expenditure by grossly rejecting the Audited Profit and Loss Account without giving any valid reason for the same and thereby re-computing the profit at Rs.30,68,980 and adopted the total income at Rs.1,34,73,980 on adhoc basis by exparte order under section 144, though audited accounts and details called for have been furnished during the course of assessment proceedings.*
3. *The learned CIT(A)-2, Panaji is not justified in law in upholding the additions made by the Assessing Officer amounting to Rs.1,04,05,000, cash receipts as undisclosed income based on the oath statement, which was later retracted.*
4. *The learned CIT(A)-2, Panaji has grossly ignored the fact that, statement recorded at the time of search or survey was taken under coercive, under duress and with totally confused state of mind of the appellant, which was later retracted*
5. *The leaned CIT(A)-2, Panaji has failed to note that, the above additions made by the Assessing Officer is purely on assumptions and presumptions based on the oath statements made under section 132(4), which was later retracted by the Appellant.*
6. *The learned CIT (A)-2, Panaji has failed to comprehend the fact that, in the absence of corresponding entry in the account of the opposite party precludes the alleged transaction in the hands of appellant.*
7. *The learned CIT(A)-2, Panaji has grossly ignored the CBDT Instructions F.No.286/2/2003-IT(Inv.) dated March 23, 2003 and various case laws, in respect of retractions on the ground of coercion and threat in the course of Search and Survey operations, as well as the various case laws on the loose sheets found during the course of search, additions made deleted.*
8. *The 14rned CIT(A)-2, Panaji has failed to appreciate the alternative plea of the appellant that, the learned Assessing Officer ought to have estimated the profit at 2 percent of the alleged additions made, as undisclosed income of the Appellant.*
9. *The leaned CIT(A)-2, Panaji has erred in relying on various case laws, which are not at all applicable to the Appellant's case.*

10. The Appellant craves leave to add, amend or alter any of the forgoing grounds.

11. For these and any other grounds that may be urged before the Hon'ble ITAT, it is prayed that the Hon'ble ITAT may allow the appeal with cost."

2.11 The crux of above grounds of appeals are that the Id. CIT(A) erred in sustaining addition made by AO on the basis of entries in loose slips found during the course of search without any corroborative materials. The Id. A.R. submitted that an amount of Rs.4.93 crores has been added from assessment year 2014-15 to 2017-18 on the basis of seized document. The seized document is nothing but loose slip, which reads as follows:

Hi laloha cash	1000000	
Hi laloha ..	500000	
Hi laloha	1400000	
cash	200000	
Cash of the adjustment	4830500	
	1900000	
	<u>4930500</u>	

2.12 The Id. A.R. submitted that this loose slip has been confronted to Ibrahim Khaleel, Managing Partner of assessee company vide statement recorded u/s 132(4) of the Act on 31.8.2017 and u/s 131 of the Act on 6.9.2017 where he has stated as answer to question

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no.33 that this amount has been received from Creek Developers and Promoters and this has been not accounted. It was also stated by Ibrahim Khaleel to question no.4 as below:

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

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Ans: I have gone through these pages and confirm that these papers were seized from my residence during the search. Page No. 182 is a receipt given by me to Mr. Roshan Shameer for Rs. 400000/- in cash. This amount is an installment of flat booked by him in Creek Galaxy, Pumpwell. I have received this amount on behalf of Mr. Ali Kutty of Creek Builders as I was present at the building premises. Page No. 181 is an estimate given to a customer for flat No. 304 in Creek Galaxy. Page No. 180 is a receipt given to Mr. Sheik Nizamuddin for the same flat for Rs. 7 lakhs and signed Mr. Ali Kutty for Flat No. 304 and the amount received in cash. Page No. 179 shows total receipt of Rs. 25 lakhs upto 14.9.2015 for the same flat and is signed by Mr. Ali Kutty.

Q5: Please explain your business relationship with Mr. Ali Kutty of M/s Creek Builders

2.13 Thus, she submitted that this amount has been received by Shri Ibrahim Khaleel on behalf of Ali Kutti and at any stretch of imagination, it cannot be construed as income of the assessee even if the loose slips have been relied upon for the purpose of making addition. Further, she submitted that addition made in the hands of assessee as unexplained money merely based on the statement made at the time of search without any corroborative evidence or materials. She submitted that these loose slips are the basis of addition without confronting the same to the person who said to be paid the said amount to assessee and also not confronting these documents to the person on whose behalf the said amount alleged to be received by the assessee. According to the Id. A.R., the statement made by assessee at the time of search u/s 132(4) of the Act or u/s 131 of the Act cannot be basis of addition without any supporting documents. She relied on the judgement of Karnataka High Court in the case of Dr. Syed Anwar vs. DCIT reported in 146 taxmann.com 247 wherein held as follows:

“Income Tax: Where Assessing Officer on basis of seized material found during search upon assessee held that there was an undisclosed income in hands of assessee alleging that he had paid ‘on-money’ to land owners, since seized documents did not bear signature of assessee and seized material also did not suggest that assessee had paid any ‘on-money’, impugned order passed by Assessing Officer was not sustainable.”

2.14 Further, she relied on the order of Chennai Tribunal in the case of Saveetha Institute of Medical & Technical Sciences vs. ACIT 12 ITR (T) 376, wherein held as under:

“Held that the admission made under section 132(4) by the concerned officer could not be treated even as a valid piece of evidence. There being no incriminating document having been found or seized during search and the statement also being abstruse, the addition in question had no legs to stand on.”

2.15 Further, she relied on the judgement of Karnataka High Court in the case of Shri Dinakar Suvarna Vs. DCIT 143 taxmann.com 362 page 11 of the case law book

“Where Assessing Officer on basis of search conducted at premises of A reopened assessment of assessee, since no proceedings were initiated against assessee under section 153C and Assessing Officer did not record his satisfaction with regard to escapement of income, impugned reassessment proceeding was not sustainable

Where Assessing Officer, on basis of search conducted at premises of A seized a diary which contained details of payment made by A to assessee, made addition in hands of assessee under section 69B as unexplained investment, in view of fact that author of diary had passed away prior to date of search and relevant entry had not been used in case of ‘A’ but it had been used in assessee’s case who was third party to proceedings, Commissioner (Appeals) was justified in deleting impugned additions.”

2.16 The ld. D.R. submitted that the assessee Ibrahim Khaleel has admitted at the time of search action u/s 132 of the Act vide statement recorded u/s 132(4) of the Act and also u/s 131 of the Act. Further, there is an evidence in the form of loose slips wherein assessee has recorded the same and the assessee has not been given any explanation for not accounting of amount mentioned therein. Hence, addition is to be sustained. Regarding the estimation of income at 8% on unaccounted contracts receipts, she submitted that the books of accounts of the assessee is rejected. Hence, an income at 8% is estimated on accounted receipts which is very reliable and same to be sustained.

3. We have heard the rival submissions and perused the materials available on record including various case laws cited by both the parties. In this case addition was made by AO towards cash received outside books of accounts in these assessment years as follows:

Asst. Year	2014-15	2015-16	2016-17	2017-18	2018-19
Amount	41,00,000	1,04,05,000	2,49,50,000	98,50,000	0

This is solely on the basis of scribblings in the loose slips found during the course of search action u/s 132 of the Act carried out in the case of assessee's partner namely Md. Ibrahim Khaleel and others and on the basis of survey, which has been conducted at the business premises of various entities including that of M/s. Emkay Hindustan Infrastructure. One of such seized material marked as A/IK/07 pages 145 to 150, which reads as follows:

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

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For Emkay Hindustan Infrastructure

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

		(147)		14,70,500
	Jehan Advance	5	12/1/15	1,20,000
	Crdr side	10	31/1/15	6,50,000
	Diff etc sat	2		
	Chg to Patu mon	10,000	14/9/15	1,65,550
	Cash Patu mon	10,000	15/9/15	500,000
	off Cont chg to Patu	1000	23/9/15	900,000
	the Bank chg Patu	200	27/9/15	500,000
				11,00,000
27/3/14		500		19,55,500
29/3/14		(-100)	11/1/15	500,000
21/6/14		500	14/12/15	500,000
22/6/14	500	500	21/1/16	800,000
19/7/14	500	200	"	1,00,000
30/8/14		500	30/1/16	200,000
3/9/14		200	12/2/16	3,40,000
11/9/14		500	23/2/16	500,000
20/9/14		300	26/2/16	9,50,000
27/9/14		505	21/2/16	2,00,000
15/10/14		1000	14/2/16	500,000
8/11/14		1000		500,000
8/12/14		1000	21/2/16	10,00,000
			29/2/16	19,00,000
			15/3/16	3,40,000
			19/3/16	2,10,000
				39,45,500
9/2/15	Cash	10,00,000	31/6/16	500,000
17/2/15	Cash	800,000	24/1/16	500,000
				39,45,500
2/3/15	Cash	500,000		19,00,000
5/3/15	"	600,000		2,00,000
7/3/15	"	300,000	24/9/16	800,000
10/3/15	Chg to Selam upla.	19,00,000	29/9/16	500,000
7/4/15	Chg to Selam upla.	1,45,000	6/10/16	330,000
		200,000	13/10/16	50,000
		1,47,05,000	18/10/16	2,70,000
			19/10/16	10,00,000
				14,40,500

(145)

Ali kaleelha cash	1900000		
Ali kaleelha ..	500000		
Ali kaleelha	1400000		
cash	450000		
Cash of the adjutment	48305000		
	1900000		
	<u>49305000</u>		

3.1 On the basis of this seized material, statement was recorded from Mr. Ibrahim Khaleel on 3.1.2017. The relevant question and answer recorded in the sworn statement is briefly stated as follows:-

8.5 As already stated, it is seen that Mr. Ibrahim Khaleel has been marketing the flats and collecting the consideration from the clients with the consent of Mr. Alikutty. In such cases, Mr. Kaleel had directly received the amount from the customers as evident from the seized record: page no 178 to 182 of Annexure 'A/IK/07'. As Mr. . Ali Kutty is an NRI, who lives most of the time abroad, Mr. . Khaleel received the amount on his behalf. The extract of the statement of Mr. . Ibrahim Khaleel is produced below

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

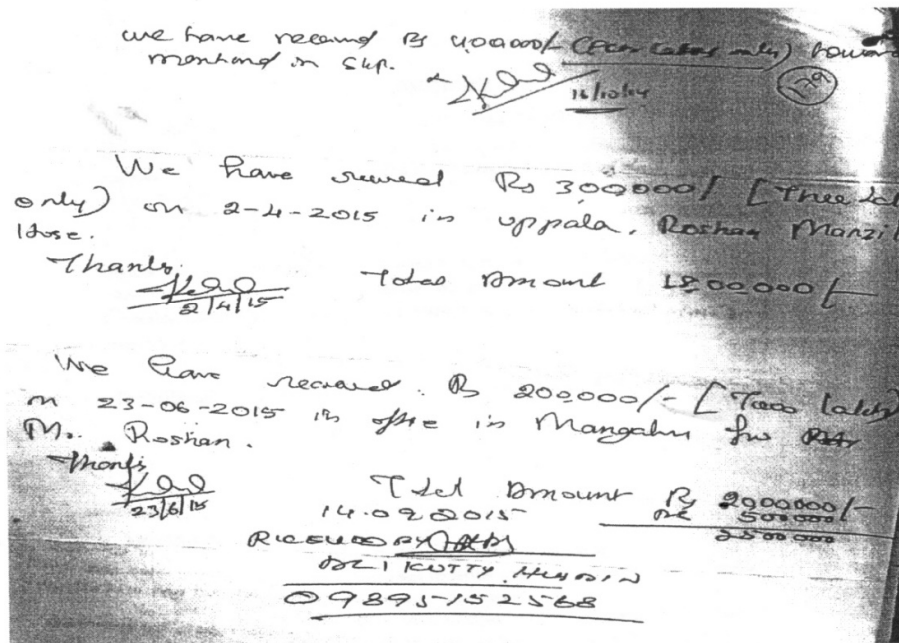
DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

Q4. During the course of search at your residence on 30.8.2017, certain documents were found seized. I am showing you page No. 178 to 182 of the seized folder A/K/07. Please go through these pages and explain the contents.

Ans: I have gone through these pages and confirm that these papers were seized from my residence during the search. Page No. 182 is a receipt given by me to Mr. Roshan Shameer for Rs. 400000/- in cash. This amount is an installment of flat booked by him in Creek Galaxy, Pumpwell. I have received this amount on behalf of Mr. Ali Kutty of Creek Builders as I was present at the building premises. Page No. 181 is an estimate given to a customer for flat No. 304 in Creek Galaxy. Page No. 180 is a receipt given to Mr. Sheik Nizamuddin for the same flat for Rs. 7 lakhs and signed Mr. Ali Kutty for Flat No. 304 and the amount received in cash. Page No. 179 shows total receipt of Rs. 25 lakhs upto 14.9.2015 for the same flat and is signed by Mr. Alikutty.

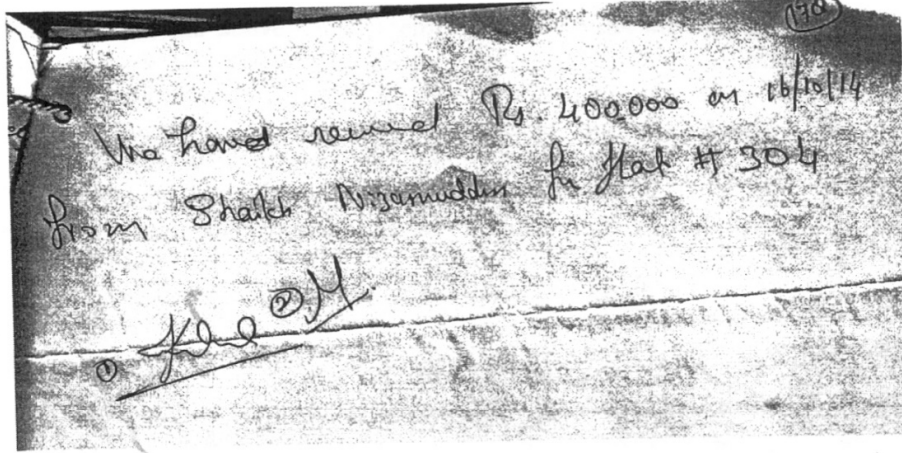
Q5: Please explain your business relationship with Mr. Ali Kutty of M/s Creek Builders

8.6 Here are the scanned copies of some of the evidences for Mr. Ibrahim Khaleel having collected cash from the buyers of the flat. The documents serially numbered from 178 to 181 found and seized from the residence of Mr. Ibrahim Khaleel at 20-6-363/1, Badriya, 2nd Cross, Kandak, Mangalore as folder 'A/IK/07' which clearly establishes the same.



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8.7 It is also seen that on some occasion Mr. Ali Kutty himself had also collected the sale consideration of the flat either personally or through his accomplice and subsequently paid towards the cost of construction.

Date : 3/09/14
Place : Mangaluru
Mangalore

RECEIPT

Received a sum of Rs. 400000/- (Rupees
Seven Lakh Only) by cash/ Cheque / D.D. mentioned
below from Mr./Mrs./ Ms./M/s. Shakh Nazamuddin
W/o./D/o./S/o.....
.....R/o.....
towards booking charges of Apartment No. 304, measuring 1878
Sq. Ft. of super built up area in the IIIrd Floor of THE
Crest Galaxy Apartment Building, Mangalore, subject to the
terms and conditions hereof.

Details of Cheque/D.D. M/s. Ali Kutty

Terms and Conditions :

- (1) Cheque and D.D. subject to realisation.
- (2) Booking is subject to entering into Agreement for Sale by payment within days.
- (3) On dishonour of Cheque /D.D. or default of Condition No.(2) booking stands automatically terminated and 10% of the booking amount stands forfeited and balance will be refunded free of interest.
- (4) Booking does not create any legal right to the apartment.

8.8 As per the above cash receipt of Rs. 7 Lakhs on 3/9/2014 it is seen that acknowledgment has been issued by Mr. Alikutty himself. Interestingly, it is seen that in the details maintained by Mr. Khaleel (A/IK/7 Page 147) for the cash received by him, Rs. 2 Lakhs has been received on 3/9/2014 and subsequently Rs. 5 Lakhs.

8.9. The cash collected as advance for sale of flats by Mr. Ibrahim Kaleel is seen to have been given to Mr. Alikutty also. Subsequently, the amounts are received back in cash towards the contract works.

Handwritten note: Flat Booking in Greek Colony
Paid Amount to Alikutty Waji

	2000000	
24/9/16	20,00,000	
18/10/16	1500000	
	<hr/>	
	55,00,000	
	200,000	
	200,000	Zshara chg

It is seen that there are umpteen number of evidences, seized during the course of the search, which all tallies with other evidences showing unaccounted entries. Further, the accounted entry as per the same seized material, which contains the unaccounted data also, are found to tally with the statement of accounts.

8.10 The seized record:A/IK/7, page 145 to 147 admittedly proves the receipt of cash outside the accounts. The total cash receipts amounted to Rs. 4,93,05,000/- up to the 03.01.2017. In answer to question 33 in the sworn statement u/s. 132(4), the assessee has stated that “..I under take to pay taxes on the above unaccounted cash receipts..”. The relevant portion of the question and the answer given by the assessee in the voluntary statement given on oath u/s. 132(4) is reproduced here under:

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DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

Q.33. I am showing you the document marked as Annexure A/IK/07, page Nos. 145 to 150 which was found and seized during the course of search u/s 132 of the Income Tax Act at your residence at Door No] 20-6-363/1 Manar, 2nd Cross, Kandak, Mangalore. Kindly explain the contents of these pages.

Ans. The tally sheet reflects ledger account details of Creek Developers & Promoters, Mangalore. In page Nos. 148 to 150, I have summed up the total receipts received through bank accounts (Corporation Bank Account of Emkay Hindustan Infrastructure) as Rs. 9,97,77,000 as on 22-07-17 as written by me in the sheets. Sheet Nos. 145 to 147 of this document, reflect the total receipts in cash as **Rs. 4,93,05,000** as on 03-01-2017. After this, there have been no payments received in cash, as can be confirmed also by the cash ledger book I am maintaining. The amount is not reflected in my books of accounts. I undertake to pay the taxes on the above unaccounted cash amount received accordingly for various financial years.

8.11 The evidences showing the cash receipt by the assessee firm towards the contract works in CASH outside the accounts have been cross verified by Mr. Ibrahim Kaleel. **Mr. Ibrahim Kaleel had given the voluntary statements on oath u/s. 132(4) on 31/8/2017 and u/s. 131 on 6/9/2017, admitting the unaccounted cash receipts** as the income of the assessee firm. The scanned copy of the sworn statements are attached here under:

Q.47. Do you have anything else to say.

I agree sir for most of the projects I have involved in Large scale cash transaction. These transactions are entered by me due to inadequate knowledge of the Tax laws. As discussed earlier the total unaccounted receipts from the various projects is as follows :

S.No		Issue	Amount	Assessment years
1.	EMKAY Hindustan Infrastructures	Total unaccounted receipt in the Galaxy Creek project	Rs. 4,93,05,000	2017-18
2	Ibrahim Kaleel (Proprietor)	White shell project- Cash Component of receipts	Rs. 43,23,500	AY 2015-16 to AY 2017
3	EMKAY Hindustan Infrastructures	Creek Galaxy project - Cheque/NEFT/RTGS(8% of the total receipts of Rs.5,55,50,000)	Rs. 44,44,000	AY 2015-16, AY 2016-17 & AY 2017-18
4	EMKAY Hindustan Infrastructures	White Shell project - 8% of Rs. 46,32,000/-	Rs. 3,70,560	AY 2015-16 to AY 2016-17
4	IK Sales Corporation	Returns not filed for AY 2016-17 and AY 2017-18	Rs. 15,00,000	AY 2015-16, AY 2016-17 & AY 2017-18
5	Individual	Unaccounted cash found in the house	Rs. 55,00,000	AY 2017-18
		Total	Rs. 6,54,43,060	

With respect to the unaccounted cash receipts, I have incurred cash expenses also, which I request you to consider while calculating the tax liability as per law. Further, I request you not to levy penalty or any prosecution for the tax evasion hereby indulged. I shall set right all my books of accounts and submit the updated books within 10 days time.

[Signature]
3/8/17
DEPONENT

VERIFICATION

I state that whatever stated above is true and correct to the best of my knowledge and belief. The above statement is given by me voluntarily in a sound state of mind without any threat, coercion or undue influence. I am aware of the consequences of any wrong statement given. The above statement has been recorded correctly as deposed by me and I stand by it.

(Before me) *[Signature]* 3/8/17

(शरीफ रशीद, भा. रा. से.)
SHERIEF RASHEED, IRS
सहायक आयकर निदेशक (अन्वेषण), युनिट- 2
Asst. Director of Income Tax (INV), Unit - 2
मंगलूरु Mangaluru - 575 004

[Signature]
3/8/17
(Deponent)

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3.2 From the above statement, the AO came to the conclusion that since the books are maintained by Mr. Ibrahim Khaleel, who is the partner of the assessee firm and the said amount of cash of Rs.4,93,05,000/- reflected in seized material A/IK/07 at pages 145 to 147 shows that the receipt of unaccounted cash up to 3.1.2017. Accordingly, he appropriated this amount of Rs.4,93,05,000/- to four assessment years as above. Now the contention of ld. A.R. is that these loose slips cannot be basis for any addition as unaccounted cash receipts in these assessment years since Mr. Ibrahim Khaleel has been marketing the flats and collecting the consideration from clients with the consent of Mr. Ali Kutty who is an NRI who lives most of the time abroad. Mr. Ibrahim Khaleel had received this amount on behalf of Mr. Ali Kutty and this amount even Mr. Ibrahim Khaleel admitted to be received the said amount cannot be taxed in the hands of the present assessee who has no element of income on this count. Now the question before us is whether above incriminating material was found during the course of search, which is being scribbling in loose pad is sufficient enough to draw an adverse inference against the assessee to conclude that information contained therein the said incriminating material relates to undisclosed income of the assessee, though assessee's partner Mr. Ibrahim Khaleel categorically denied the receipt of said amount on behalf of present assessee and confirmed that it was received on behalf of Mr. Ali Kutty who was non-resident and lives in abroad. In our opinion, statement recorded under various provisions of the Income Tax Act are a vital tool in the hands of the Income Tax authorities to make an addition in an assessment coupled with the admission made by the maker/assessee, if it is supported by corroborative evidence. In the present case, the contents recorded in the statement not supported by corroborative evidence, solely on the basis of statement recorded during the course of search, no adverse inference can be drawn

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against the assessee, more particularly when there is absence of corresponding entry in the account of the opposite party, which precludes alleged transaction. It is not the case of the AO that, there is corresponding entry in the assessee's account providing corroboration. It is well settled principle of law that admission is an extremely important piece of evidence, but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of accounts did not correct disclose the correct state of facts. The principle is supported by the decision of Hon'ble Supreme Court in the case of Pullangode Rubber Produce Company Ltd. Vs. State of Kerala reported in 91 ITR 18 (SC).

3.3 In this factual background, if we examine the facts of present case, one has to see whether addition made by AO towards unaccounted cash receipts received from various persons as recorded in seized document, which is being a scribbling pad. Admittedly, incriminating material found during the course of search does not bare the signature of any person and also the searched team have not brought on record that who has written the said document. It also does not contain any narrations with reference to who has paid the said amount, on what date, it has been paid and the purpose for which it has been paid. According to the A.O., the assessee has recorded the cash receipts from various parties and which is not reflected in the books of accounts maintained by the assessee. However, when the statement recorded by searched team from Mr. Ibrahim Khaleel, partner of assessee's firm clearly mentioned that he has been marketing the flats, collecting the consideration from the clients with the consent of Mr. Ali Kutty. Mr. Ali Kutty is an NRI who lives most of the time abroad. Mr. Ibrahim Khaleel received the amount on his behalf and this statement has been reproduced in the

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earlier para of this order. He also stated that an amount of Rs. 4 lakhs has been received from Roshan Shameer and this amount was towards the instalment of flat booked by him in Creek Galaxy, Pumpwell and also Mr. Ibrahim Khaleel stated that this amount has been received on behalf of Mr. Ali Kutty of Creek builder. Regarding page 181 he has stated that it is an estimate given to customer for flat No.304 in Creek Galaxy. Page 180 is a receipt given to Mr. Sk. Nizamuddin for the same flat for Rs.7 lakhs and signed by Mr. Ali Kutty for flat no.304 and the amount received in cash. Page 179 was the total receipt of Rs.35 lakhs up to 14.9.2015 for the same flat signed by Mr. Ali Kutty. To the question No.33, Mr. Khaleel has stated as follows:

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DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

Q.33. I am showing you the document marked as Annexure A/IK/07, page Nos. 145 to 150 which was found and seized during the course of search u/s 132 of the Income Tax Act at your residence at Door No| 20-6-363/1 Manar, 2nd Cross, Kandak, Mangalore. Kindly explain the contents of these pages.

Ans. The tally sheet reflects ledger account details of Creek Developers & Promoters, Mangalore. In page Nos. 148 to 150, I have summed up the total receipts received through bank accounts (Corporation Bank Account of Emkay Hindustan infrastructure) as Rs. 9,97,77,000 as on 22-07-17 as written by me in the sheets. Sheet Nos. 145 to 147 of this document, reflect the total receipts in cash as **Rs. 4,93,05,000** as on 03-01-2017. After this, there have been no payments received in cash, as can be confirmed also by the cash ledger book I am maintaining. The amount is not reflected in my books of accounts. I undertake to pay the taxes on the above unaccounted cash amount received accordingly for various financial years.

8.11 The evidences showing the cash receipt by the assessee firm towards the contract works in CASH outside the accounts have been cross verified by Mr. Ibrahim Kaleel. **Mr. Ibrahim Kaleel had given the voluntary statements on oath u/s. 132(4) on 31/8/2017 and u/s. 131 on 6/9/2017, admitting the unaccounted cash receipts** as the income of the assessee firm. The scanned copy of the sworn statements are attached here under:

3.4 Finally, Mr. Ibrahim Khaleel has stated in Q.No.47 a reproduced in page 19 of this order

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3.5 Thus, the AO came to the conclusion that the assessee has systematically recorded cash receipts from various parties, which are not recorded in regular books of accounts maintained by the assessee. The said finding has been arrived on the basis of admission of Mr. Ibrahim Khaleel. However, fact remains that there were no corroborative material either to support the assessee or AO's contention. The assessee has also made an allegation before us that statement was recorded at the time of search under duress and Mr. Ibrahim Khaleel was with totally confused state of mind. The Id. A.R. also submitted that while recording the statement Mr. Ibrahim Khaleel clearly mentioned in his answer to question no.47 that he has incurred cash expenses also and which has to be considered while calculating the tax liability as per law. In our opinion, even the statement recorded to be considered as true, it has to be considered in its entirety and there shall not be any cherry picking and the AO cannot consider only the portion which is favourable to revenue.

3.6 The Id. D.R. stated that the assessee has entered only the receipt of cash and not recorded any expenses details. Hence, there is no question of giving any deduction towards expenses. The Id. A.R. also submitted that in the question no.47, it was stated by Mr. Ibrahim Khaleel that unaccounted cash collection was Rs.4,93,05,000/- relating to assessment year 2017-18. Contrary to this, the AO spread it to 4 assessment years, which is contrary to the statement recorded on 31.8.2017. In our opinion, there is no correlation between the seized material and answer to question No.33 & 47 and the addition made by AO in this assessment years. Further, the AO stated that assessee has received cash from various parties but failed to bring on record any particular name from whom said cash has been received and also name and address of the person to whom said cash has been handed over. If at all, the AO had details

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of name and address of person who has paid the cash to the assessee, then he should have examined the said person to know the exact nature of receipts recorded in the impugned loose slips/scribbling pad. There is no iota of any evidence on record to prove that the AO had made any attempt to corroborate the entries mentioned in alleged scribbling pad or brought on record the details of name and address of payee. In the absence of any specific reference to the parties, from whom the monies have been received and also nature of receipt for which cash has been paid, it is very difficult to accept the noting in scribbling pad as undisclosed income of the assessee outside the books of accounts.

3.7 Further, on going through the answer to question no.47, it is abundantly clear that answer to question no.47 purport the statement of assessee and his declaration obtained by search team towards undisclosed income for the period covering the assessment year 2017-18 only and it looks like this is an obtained statement without bringing any material on record to support the same. It is well settled principle of law that when any document like present scribbling pad/loose slips are recovered during the course of search action and the revenue wants to make use of it, the onus is on the revenue to collect cogent evidence to corroborate the noting in alleged documents. In this case, revenue has failed to bring on record any cogent evidence to prove conclusively that the noting in the seized documents refer to the unaccounted cash receipts of the assessee. Further, no circumstantial evidence in the form of unaccounted assets and liabilities outside the books of accounts were found in the course of search action except physical cash of Rs.55 lakhs. In our opinion, the impugned additions made by AO on the basis of seized materials in the form of entries in the loose slips/scribbling pad is an in-advocate material. As such, since it cannot stand on its own legs.

3.8 The main contention of Id. D.R. is that the statement recorded u/s 132(4)/131 of the Act is self-speaking document and it cannot be overruled. In our opinion, reliability of these statements depends upon the facts of each case and particularly surrounding circumstances and in this case, the lower authorities reached to the conclusion on the basis of assumption resulting into fostering liability on the assessee on the basis of in-advocate material coupled with statement recorded during the course of search since there is no corroborative material to support the contention of the AO. In the absence of corroborative evidence, merely on the basis of admission in the statement recorded u/s 132(4)/131 of the Act, no addition could be made by AO. The AO failed to bring on record any materials to support his view to make an addition and there was no reason as to why AO did not proceed further to enquire into the unaccounted income as admitted by assessee in statement recorded u/s 132(4) of the Act. This fact was also not taken care of and also no corresponding assets with reference to unaccounted cash receipt of Rs.4,93,05,000/- was brought on record. In such circumstances, we are not in a position to sustain this addition. For this proposition, we rely on the following judgement:

a) Sri Ganesh Trading Company Vs. CIT 257 CTR 159
(Jharkhand)

3.9 In the case of CIT Vs. Layer Exports Pvt. Ltd. reported in 53 ITR (Trib) 416 (Mum), wherein held that *“loose papers found during the course of search and after considering the relevant facts held that no addition could be made simply on the basis of uncorroborated noting in loose paper found during the course of search action because addition on account of alleged on money receipts made simply on the basis of uncorroborated noting in scribbling or loose sheets of papers made by some unidentified person having no evidentiary value was unsustainable and bad in law”*.

3.10 Being so, in our opinion, the addition made by AO on the basis of contents in loose slips/scribbling pad is not based on any cogent evidence or unaccounted assets or unaccounted investments unearthed during the course of search, but solely on the basis of assumption and presumptions. In our opinion, suspicion however strong cannot take place of evidence, which can be used against the assessee. Had it been the case of the AO that the alleged entries in loose slips/scribbling pads and its contents was tested by examination and by cross examining the parties, then obviously it would give rise to an occasion to the AO to rely on said documents to make additions. In the present case, the AO has not made any effort to verify the entries recorded in the loose slips/scribbling pads by making further enquiries and examination/cross examination of the alleged persons or payee of said amount. Further, on perusal of entries in the loose slips/scribbling pads as recorded by AO in the assessment order, we find that nothing was emanating regarding name and address of persons through whom the said amount was received and the parties for which it has been paid. In the absence of any effort from AO by way of further proper enquiries, merely on the basis of entries in the loose slips/scribbling pad coupled with the statement recorded during the course of search, addition cannot be sustained. Being so, we are inclined to delete the addition made by AO in these assessment years towards unaccounted cash receipts by assessee. These grounds of appeal in all these appeals are allowed.

3.11 Since we allowed the main ground of the assessee, the alternative ground of the assessee is infructuous and dismissed.

3.12 In the result, the assessee's appeals in ITA Nos.979 to 983/Bang/2022 for the AYs 2014-15 to 2018-19 are allowed.

ITA 733/Bang/2022 (AY 2016-17):

4. Facts of the case are that assessee is an individual and carrying on the business as builders and real estate development and proprietor of I.K. Sales Corporation, which is engaged plywood business. The assessee filed his return of income for the assessment year 2016-2017 on 24.11.2017 declaring therein total income of Rs.10,14,210.

4.1 A search and seizure operation under section 132 of the Act was conducted at the assessee residence along with Mr.Kodi Abdul Khader and Mr.Mohammed Ibrahim. Simultaneously, survey under section 133A was also conducted at the business premises of MA Smart Developers Mangalore Private Limited, Tobasco Hindustan Developers Private Limited, wherein the assessee is a Director and Emkay Hindustan and MKH Infrastructure, wherein the assessee is a partner.

4.2 Consequent to the said search and seizure operation, notices under Section 153A dated 10.1.2019 was issued and response thereto assessee filed return of income on 01.8.2019 declaring total income of Rs.15,14,240/-. Subsequently, assessment selected for scrutiny and notices under section 143(2) and 142(1) were issued calling for details. Finally, assessment was concluded under section 143(3) read with Section 153A vide order dated 24.12.2019. In the order assessment, the Assessing Officer has made following additions and thereby raised tax demand of Rs.11,09,285/-.

1. Cash receipts based on the oath statement -
Rs.15,00,000

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2. Cheques receipts based on the Oath statement,
Being 8 percent of Rs.11,00,000
Rs.88,000

4.3 Being aggrieved by the above order, the assessee had preferred an appeal before the Commissioner of Income tax (Appeals)-2, Panaji. The Commissioner of Income tax (Appeals) vide his order dated 24.5.2022 in Appeal No. CIT(A)-2/PNJ/10238/2019-20 has dismissed the appeal filed by the assessee, upholding the additions Made by the Assessing Officer.

4.4 Similarly, for the assessment year 2017-18, the AO has made additions as follows:

1. Cash receipts based on the Oath statement – Rs.24,77,120
2. Cheques receipts based on the oath
Statement, being 8 percent of Rs.35,32,000 – Rs.2,82,560
3. Seized cash under section 69A - Rs.50,60,000

4.5 Similarly, for the assessment year 2018-19, the AO has made additions as follows:

1. Seized cash under section 69A on
Protective basis Rs.50,60,000
2. Unexplained investment u/s 69, being
Purchase of foreign currency Rs.50,79,325

4.6 Against this assessee went in appeal before Id. CIT(A) who has confirmed the additions. Again, the assessee is in appeal before us challenging the above additions. The Id. A.R. submitted that the Commissioner of Income tax (Appeals) while upholding the additions made has grossly overlooked the fact that, additions made is purely on assumptions and presumptions based on the oath statements and no other materials were found at the time of search.

Further, argued that, mere admission of amounts under section 132(4) as additional unexplained income would not lead to drawing of adverse inference that, unexplained income was from sale of property was made by assessee, particularly when no evidence was produced to justify said receipts by assessee without cross examining the payee of the alleged cash receipts. Further, whatever amount received through cheques have duly been declared in the return of income filed as per the provisions of section 44AD of the Act on presumptive tax basis. Also, overlooked the following case laws, which are squarely applicable to the Appellant's case.

1. *Common Cause (A Registered Society) Vs. Union of India* [2017] (77 Taxmann.com 245) (SC)
2. *Principal CIT, Central III Vs. Krutika Land (P) Ltd.* 103 taxmann.com 9 (SC)
3. *CIT Vs. P. V. Kalyansundaram* (164 *Taxman* 78) (SC)
4. *CIT, Mumbai Vs. Lavanya Land Private Limited* (2017) 83 taxmann.com 161 (Bombay)
5. *CIT, Bangalore Vs. IBC Knowledge Part (P) Ltd.* (2016) 69 taxmann.com 108 (Karnataka)

4.7 The Id. A.R. for the assessee further submitted that the Commissioner of Income tax (Appeals) has failed to comprehend the following facts brought to his notice.

- The additions were made purely on assumptions and presumptions on *ad hoc* basis and in fact, no materials were found at the time of Search on the appellant Further, no cross verification of payee was done by the payee for alleged receipt of unexplained income from the payee.

- No on-money was exchanged between the parties on the basis of material found in the premises and on the statement given by appellant. In the instant case, both the parties, searched party being Appellant as well as the payee of money has denied having exchanged the on money for sale of land. Even after the Appellant's case is covered under search operations under section 132, the department did not unearth any evidence regarding exchange of cash.
- The AO merely acted upon on the statement given by the appellant, which was subsequently retracted by him. It was a settled position of law that unless the statement is tested under the cross examination, the same cannot be considered as evidence against the assessee. The AO used the admission made in the statement recorded under section 132(4) of the Act. But, the assessing officer failed to note that, admission itself cannot be considered as conclusive evidence against the assessee, unless there is corroborative evidence on record.
- There is no other evidence on record to prove that, on money received. The AO, without bringing on record any evidence to prove that, on money is exchanged between the parties, merely harping upon the loose sheet, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income. The assessing officer 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 assessing officer did not conduct any independent inquiry relating to the value of the property instead, merely relied upon the statement, which is not correct. Further, there is no proof of origin and destination of on money

- To tax any particular payments/receipts, primary evidence is very much necessary and unless there is primary evidence, circumstantial evidence cannot be considered as conclusive evidence against any person to tax any particular payments/receipts. Circumstantial evidence plays an important role in income tax proceeding. The payment/receipt of on money is purely a factual issue which cannot be decided based on circumstantial evidence.
- Section 132(4) was subject to variation and once the appellant had access to seized documents and he realised subsequently that, there was no occasion to make this disclosure, he was having an inherent right to clarify the situation so that he could be taxed only on real income and not on an income which was not there at all, since there was no evidence to prove otherwise too. In addition, the very important fact that, remains that inspite of the search, no material/evidence was found to show that the assessee was having any other undisclosed assets which could be linked with this disclosure.

4.8 The ld. A.R. further submitted that the learned Commissioner of Income tax (Appeals) has failed to note the, alternative plea of the assessee that, only profit element out to have been taxed out of the additions made since, assessee has already declared his income as per the provisions of section 444D of the Act on presumptive tax basis.

5. The ld. A.R. submitted that the Commissioner of Income tax (Appeals) while upholding the additions made has grossly overlooked the fact that, Additions made is purely on assumptions and presumptions based on the oath statements and no other

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materials were found at the time of search. Further, argued that, mere admission-of amounts under section 132(4) as additional unexplained income would not lead to drawing of adverse inference that, unexplained income was from sale of property was made by assessee, particularly when no evidence was produced to justify said receipts by assessee without cross examining the payee of the alleged cash receipts. Further, whatever amount received through cheques have duly been declared in the return of income filed as per the provisions of section 44AD of the Act on presumptive tax basis.

6. With regard to ITA No.735/Bang/2022 for the AY 2018-19 is concerned the ld. A.R. for the assessee submitted that this was a protective addition of Rs.50.60 lakhs towards unaccounted cash seized from the premises. Regarding addition of Rs.50.60 lakhs u/s 69A of the Act, it was submitted that only income to be estimated at 8% and entire amount cannot be considered as income of the assessee as the assessee has already declared income on it at Rs.4,40,000/-. Hence, she prayed that the addition of Rs.50.60 lakhs is to be deleted.

7. The ld. D.R. relied on the order of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. In the first ground for the assessment year 2016-17, the assessee herein challenged the addition of Rs.15 lakhs towards unaccounted cash and challenged the computation of income on cheque receipts at 8% i.e. Rs.88,000/- and also challenged the offered income of Rs.5 lakhs from plywood business in ground No.2.

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8.1 As discussed earlier, the answer to the question no.47 is the basis of addition

8.2 On the basis of above answer to question no.47, AO made addition of Rs.15 lakhs towards unaccounted cash receipts. As discussed in the case of Emkay Hindustan Infrastructure in ITA Nos.979 to 983/Bang/2022 in para Nos.3 to 3.10 of this order, this addition is deleted.

8.3 With regard to addition of Rs.88,000/- i.e. the profit estimated at 8% on Rs.11 lakhs amount received by cheques/RTGS, this being the actual amount received through banking channels, the AO has taken the income on Rs.11 lakhs at 8% which is very reasonable and the same is confirmed. This issue in ground No.2 of assessee is rejected. Hence, this ground of appeal in ground No.2 is partly allowed, thereby a sum of Rs.88,000/- is sustained out of Rs.15,88,000/- addition made by AO and Rs.15,00,000/- is deleted.

8.4 Next ground of assessee's appeal is with regard to declaration of Rs.5 lakhs for which statement recorded u/s 132(4) of the Act offered in the return of income. The assessee has not put any serious objection before us and this being admitted income in the return of income, hence, we do not find any merit in this ground and the same is dismissed.

8.5 In the result, ITA No.733/Bang/2022 is partly allowed.

ITA No.734/Bang/2022 (AY 2017-18):

9. As discussed earlier, the AO has made addition of Rs.24,77,120/- towards unaccounted cash receipts. As discussed in earlier para in 8.2 of the order, this addition is deleted.

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9.1 Next ground is regarding addition of Rs.2,82,560/- at 8% on sales through cheque of Rs.35,32,000/-. This addition is confirmed in earlier para no.8.3 of this order. Thus, out of total addition of Rs.27,59,730/- only R.2,82,560/- is sustained and ground No.2 of assessee's appeal is partly allowed.

9.2 In th result, ITA No.734/Bang/2022 is partly allowed.

ITA No.735/Bang/2022:

9.3 The ground in this appeal in ITA No.735/Bang/2022 is regarding addition of Rs.50.60 lakhs made u/s 69A of the Act. The contention of the ld. A.R. is that the assessee has been assessed to income tax from year to year and assessee has filed its return of income from earlier years and it was accumulated cash balance of Rs.55 lakhs. As such, the entire amount cannot be added as unexplained income u/s 69A of the Act.

9.4 Facts of the case are that there was a physical cash of Rs.55 lakhs found during the course of search action u/s 132 of the Act in the case of assessee on 30.8.2017. The assessee has offered income on this at 8% at Rs.4,40,000/-. The AO treated the entire Rs.55 lakhs as unexplained investment u/s 69A of the Act and brought the balance amount of Rs.50.60 lakhs. Against this assessee is in appeal before us. Now the contention of the ld. A.R. is that assessee has been income tax assessee from year to year. This is the accumulated cash balance in the hands of the assessee and the credit to be given. She also submitted that the assessee has received an amount from his partner (1) Mr. B.A. Ibrahim & (2) Mr. Mohammad Mohideen.

9.5 The ld. D.R. submitted that the assessee has not filed the necessary evidence to prove the availability of cash balance in the books of accounts of the assessee.

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9.6 We have heard the rival submissions and perused the materials available on record. In our opinion, the assessee has to place necessary evidence to show the availability of cash balance as on the date of search i.e. 30.8.2017. Once the assessee produce the books of accounts of the entities owned by the assessee as a proprietor, the AO has to give the credit to the extent of cash balance available in the books of accounts of the assessee as on the date of search. Further, the claim of the Id. A.R. before us was that the assessee received certain amount of cash from his partners Mr. B. A. Ibrahim & Mr. Mohammad Mohideen for which the assessee required to furnish necessary evidence to prove the cash availability on this count. Accordingly, we direct the assessee to produce the cash book relating to the relevant period along with other evidence to prove the availability of cash balance as on date of seizure of this cash i.e. 30.8.2017. If the assessee produces such evidences before AO to prove the cash availability, the AO has to give credence to such evidence or material brought on record by assessee and to decide the issue on that basis. With this observation, we remit the issue in dispute to the file of AO for verification of the relevant evidence. This appeal of the assessee in ITA No.735/Bang/2022 for the AY 2017-18 is partly allowed for statistical purposes.

10. In the result, the appeals of the assessee in ITA Nos.733 to 734/Bang/2022 are partly allowed and ITA No.735/Bang/2022 is partly allowed for statistical purposes.

Order pronounced in the open court on 16th June, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th June, 2023.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**