

**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	A.Y.	Appellant / Assessee	Respondent
1	300/Hyd/2023	2017-18	Siva Prasad Reddy Buchepalli, Chimakurthy. PAN : AHUPB9435H.	ACIT, Central Circle – 2(3), Hyderabad.
2	301/Hyd/2023	2018-19	-do-	-do-
3	302/Hyd/2023	2017-18	Ramesh Chandra Majithia, R/o. Hyderabad. PAN : AEWPM2354M	-do-
4	322/Hyd/2023	2017-18	Naga Lakshmi Buchepalli, Chimakurthy. PAN : ANWPB0829K	ACIT, Central Circle – 1(2), Hyderabad.
5	323/Hyd/2023	2018-19	-do-	-do-

Appellant by : Shri M.V. Prasad, C.A.

Respondent by : Ms. T.H. Vijaya Lakshmi, CIT-DR

Date of Hearing : 20.09.2023

Date of Pronouncement : 25.09.2023

ORDER

PER BENCH :

The captioned appeals filed by the respective assesseees are directed against the separate orders passed by the learned Commissioner of Income Tax (Appeals) – 12, Hyderabad dated 06.12.2022 for the assessment years 2017-18 and

2018-19. Since identical grounds have been raised by the respective assesseees 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. The captioned appeals filed by the assesseees are barred by limitation by 114, 114, 120, 97 and 97 days, respectively. The ld. AR for the assessee has moved a condonation petition explaining reasons thereof. Ld. DR objected for the same. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit all the appeals for hearing.

2.1 The grounds raised by the respective assesseees in all the captioned appeals are same and hence, we are reproducing the grounds of ITA No.300/Hyd/2023 only, for the sake of brevity and the same 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 house property, business and other sources. The assessee filed his original return of income u/s.139(1) of the Act on 29.11.2017 declaring total income of Rs.Nil. Subsequently, search and Seizure operation u/s. 132 of 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.19.03.2021 for A.Y. 2017-18 was issued to the assessee. In response to such notice,

the assessee filed his return of income declaring total income at Rs.Nil. 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.4,75,00,000/- to the developer, Rs.2,35,00,000/- through bank and Rs.2,40,00,000/- in cash, in respect of Villa No.31. After examining the material on record and the information furnished, the AO has stated that the assessee had in fact paid on money amount in cash of Rs.8,79,568/- towards consideration over and above the amount which was admitted 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 and 4.5 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 also given the apportionment of the addition for A.Ys 2016-17 and 2017-18. The relevant paragraphs of the assessment order is 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.31 purchased by the assessee from M/s. KMR Estates and Builders Private Limited, he submitted that the assessee has paid Rs.4,75,00,000/-

to the developer, Rs.2,35,00,000/- through bank and Rs.2,40,00,000/- 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.31 purchased by the assessee from M/s. KMR Estate and Builders Pvt. Ltd, it is evident that the assessee has paid Rs.4,75,00,000/- to the developer (Rs.2,35,00,000/- through bank and Rs.2,40,00,000/- 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 bank, as below :

Villa No.	F.Y.	A.Y.	Amount paid through bank	Amount paid in cash	Total paid
31	2016-17	2017-18	8,61,244	8,79,568	
	2017-18	2018-19	2,26,38,756	2,31,20,432	
	Total		1,75,00,000	2,35,00,000	2,40,00,000

4.5. 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 Rs2,35,00,000/- in cash for purchase of villa. Accordingly, the cash payment of Rs.8,79,568/- (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) r.w.s. 153C of the Income Tax Act, 1961 by making an addition of Rs.8,79,568/- as unexplained investment in purchase of Villa u/s.69 of the I.T.Act.

6. The assessee feeling aggrieved by the order had challenged the assessment order before the learned CIT (A)-12 and the learned CIT(A) vide order dated 06.12.2022 had dismissed the appeal of assessee.

7. Before us, Ld.AR submitted that the case of the assessee is covered with the decision of the Tribunal in ITA No.3/Hyd/2023 for A.Y. 2018-19.

7.1 On the other hand, ld. DR relied on the orders of lower authorities.

8. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to addition made in the hands of assessee on account of some alleged incriminating evidence regarding receipt of money from the buyers of villas. Before us, ld. AR submitted that the case is already covered in favour of the assessee and filed the order of Tribunal wherein the Tribunal gave decision in favour of assessee by observing as under :

“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 additions were made by the Assessing Officer in the hands of assessee on account of some alleged incriminating evidence with regard to 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 of M/s. KMR Estates and Builders Pvt. Ltd recorded on 25.03.2019 wherein he had confirmed 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 name of the buyer, 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. 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 elsewhere.

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 pointed out by the assessee in his submissions. The details of the said documents are reproduced hereinabove.

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 this document as Annexure A/KMR/RES/01 in Para 4.1 of his order by reference, however, in the entire order, he had

not referred to the Annexure A/KMR/RES/01 except the same was mentioned in 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 Id.CIT(A) in his order, which we have also reproduced elsewhere in this order.

26. From the perusal of Annexure A/KMR/RES/01, it is abundantly clear that though the document was retrieved from the mobile of Shri Kolla Madhava Reddy, however, even assuming the document to be validly retrieved, ignoring the objections of the assessee that it cannot be relied upon in view of Section 65B of the Indian Evidence Act, it cannot be said to be a receipt of money from buyers of Villas. Firstly, for the purpose of a document to be receipt, it is essential that it should have the following description :

- 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 fastening the liability u/s 153C of the Act. The alleged incriminating documents does 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 on the basis of such inchoate and dumb document, no liability can be put 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 . Id.CIT(A) in his order extensively refer 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. In the case of Dreamcity Buildwell (P.) Ltd.* [2019] 110 taxmann.com 28 (Delhi), in the identical facts 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. Section 132 (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 categorical held that the incriminating material should belongs 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 show that the Revenue Authority have not even recorded the statement of any of the flat buyers and have not confronted the incriminating material to them. Admittedly, the assessee before us have denied to have 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 was 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 were recorded by the Assessing Officer nor the incriminating material was confronted nor the said documents were forming part of satisfaction recorded by the Assessing Officer. Besides the above, the reliance on the settlement by the 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 provides as under :*

31. *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 been arrived. In the application, the assessee is require to disclose as to whether the application pertains to only one previous years or to more than one previous 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 passe by the Settlement Commission shall be conclusive and no matter covered by such order shall be subject matter of any proceedings under the Income Tax Act, 1961.

32. Therefore, it is abundantly clear that the Revenue cannot rely upon the Settlement arrived between M/s. KMR Estates and Builders Pvt. Ltd and the Revenue before the Settlement Commission, as the subject matter of the present proceedings were not the subject matter of the proceedings before the Settlement Commission. Further, neither the assessee was a party before the Settlement Commission nor he was given any opportunity of representation before the Settlement Commission nor any order was passed by the Settlement Commission on the application of the assessee. Therefore, the Settlement, if any, arrived between M/s. KMR Estates and Builders Pvt. Ltd and the assessee 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. Neither the statement of Shri Kolla Madhava Reddy nor the Settlement Order of the Settlement Commission nor statement of Kolla Madhav Abhilash, Director can be said to be the incriminating documents / evidence for the purpose of making the addition in the hands of the assessee as the said document or the admission of the liability do not belonged 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 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 have been referred to. On closure scrutiny of all these three documents referred to by the ld.CIT(A), firstly it is amply clear that three documents were not the incriminating documents found during the search. Further there is no inconsistency or incoherency between these three documents. Firstly, in agreement of sale, the total sale consideration to be paid by P. Anusha was Rs.2.25 crores which was 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 which was later on executed by the M/s. KMR Estates and Builders Pvt. Ltd in favour of P Anusha was only for an amount of Rs.1.15 crore was only a semi furnished villa. On the same date, the M/s. KMR Estates and Builders Pvt. Ltd had entered into an agreement for 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 had been mentioned. The agreement of sale was the lumpsum agreement to provide 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 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 the M/s. KMR Estates and Builders Pvt. Ltd. The conclusion drawn by the ld.CIT(A), based on the completion agreement/specification and the statement of the Director of the Company Shri Kolla Madhava Reddy was not based on any cogent evidence/material. In our view, the same is required to be rejected.

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. 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 tenants were made by the assessee through the account payee cheque after deduction of TDS. However, the ld.CIT(A) had wrongly ignored the above said fact and had relied upon the statement of Shri Kolla Madhava Reddy for the purpose of making addition in the hands of the assessee.

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/-.

“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."

36. From the bare reading of the above said, it is clear that it is the case of the Id.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 of any cash payment paid by the Villa owner 63. The Annexure P1 is already reproduced herein above at page 14 of this order. Thus, even the assumption drawn by the Id.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 Id.CIT(A) cannot be 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 assessee ITA No.20/h/2023, the registration of property had taken place 18.2.2020 whereas in the case of villa owners of 63 & 64, the registration took place on 3.6.2019. In both the case 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 the document, came to the possession of the Revenue after the search. In all cases, there is no incriminating documents against the assessee. The only incriminating document relied upon by the Revenue are Annexure P1, P2 and P7. Those 3 documents are dumb document and it is not possible to correlate any of the assessee with that of making cash payment to the M/s. KMR Estates and Builders Pvt. Ltd. In Annexure P1, the relevant entry pertaining to Villa Nos.63 and 64 is 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

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 agreement value of Villa Nos.63 and 64 was Rs.420/- each i.e. Rs.840/-. With 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 at Rs.1440.5.

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

37. Interestingly, the 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 against contrary to commonsense and preponderance of probability. The above said is further clear that 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 the ready reference, we are reproducing below for the sake of clarity.

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 even not been received by the company. The total amount pending towards villa owners would come to 450.46. We failed 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 yet to be received by the M/s. KMR Estates and Builders Pvt. Ltd and yet to be paid by 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 referred 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 have 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 have been mentioned to. Even in the Annexure P1 which was confronted to the said Director, the necessary requisite information were lacking, hence we had held it a dumb document and no question had been asked by the Revenue during the course of recording of statement 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 completion of the villa. No such question was ever asked by the Revenue in the statement of the Director Shri Kolla Madhava Reddy.

41. On the contrary Kolla Madhav Abhilash, Director had stated "However, we have not maintained 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 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, however, the year-wise declaration of the disclosure made by the company have not been provided to us. Even comparing the year wise addition declared by M/s. KMR Estates and Builders Pvt. Ltd , did not match with the additions made in the hands of all villa owners. In view of the above also, the order of the Id.CIT(A) is unsustainable.

42. The Id.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 reply to question no.11 to the following effect :

"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.**

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 had 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 sale of these villas is Rs.117.917 crores which include both cheque and cash. 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 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, there is no reason to conclude that 'on money' was paid at the time of registration of the villas.*

**left table intentionally.*

44. *The revenue had also filled the tabulation giving the details like villa no, total value, agreement value, cash receipt, receipt pending, date of registration and Assessment Year in the following manner :-*

**left table intentionally.*

45. *The Revenue in the written submissions had taken the incoherent and inconsistent stands with respect to receipt of 'on money'. To buttress the above, we would like to reproduce some of the contradictory submissions made before us :*

"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. *The stand of the Revenue is inconsistent as at one place, the ld.DR is making a submission that the 'on money' was paid at the time of registration and on the other hand, in some of the cases, it is the case that 'one money' was paid for carrying out interior work. As per the Chart furnished by the Revenue, reproduced hereinabove, it is clear that the sale deed was registered in respect of ten villas after the date of search. Therefore, there cannot be any possession to pay the 'on money' before the registration, as even this is not the case of the Revenue. Further, the Revenue had failed to produce any evidence showing that the payment of any 'on money' by any of the assesseees before us. The Revenue had failed to discharge the basic and primary duty even to examine the assesseees 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 hypothesis. The addition should always be made on the basis of cogent, incriminating and admissible evidence pertaining to the years under consideration and it should belongs to the assesseees.*

47. *Whereas, 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. 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, because the maker of statement can bind himself, but how he bind others from his statement without there being any further evidence on record. 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. *The respondent had failed to appreciate in what context and under what circumstances, M/s. KMR Estates and Builders Pvt. Ltd 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 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 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.31, 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:***

**left table intentionally*

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 you 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 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 :**

**left table intentionally.*

50. In the statement Shri Kolla Madhava Reddy had not given the details of cash received from individual villa owners on the other hand the admission was made on account lapses in maintenance of bills/ vouchers and other deficiencies. Hence, it can be presumed that the admission was made on account of cash receipt towards the additional work done by it in the villas. 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 had 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 with assessment years are as under :

**left table intentionally.*

51. Besides the above 20 Villas, there are 5 more villas, which were allegedly sold by the M/s. KMR Estates and Builders Pvt. Ltd, allegedly after receiving the payment in cheque and cash. In the Written Submissions, the Revenue at 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 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	115865487	78255487	37610000	34759646	5727509	29032136
L	3	3	0	1	5	6

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 was 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 the assessee 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 in the year under consideration. 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 and further, there has to be incriminating material of that assessment year correlating with payment of cash money, on the basis of which the addition can be 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. Further, interestingly, pursuant our direction, the Revenue had filed the statement of the income returned u/s 139/153A of the Act, 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 :*

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 ITSB 86,19,270 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 was Rs.9,36,60,499/-, whereas, the additions made in the hands of the assessee, 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 assessee, 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/-. 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 if the evidence of receipt of 'on money' was found from the premises of the Builder, which was allegedly paid by the villa owners. 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.

56. We have the occasion to examine the satisfaction note reproduced by the Id.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 the external aid, in other words, we cannot rely upon the documents came to their 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 bear 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 assessee 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 even though 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 that 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. On our pointed query, the ld.DR had sought the reply from the Assessing Officer / ld.CIT(A). However, till date, no submissions were made in this regard.*

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 cannot bound 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/Cheney/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 (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L. Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and 'details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The law 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)j. 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.

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 electronic record. Further, in Para 22, the Hon'ble Supreme Court had 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 if the data is 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 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 were 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. This aspect along with the other had been examined by the Hon'ble Supreme Court 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 :*

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 :*

Xxxxxx

**left the images intentionally*

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 iphone 10 bearing no.9553066666**, which is not appearing in any of these certificates. Further,*

the Revenue had filed digital evidence collection form in respect to the following computers. However, no certificates u/s 65B had been given in respect of these computers.

Make	Sr.No
Dell	ZIDCCA5 Size : 1000 GB
Intex	ZIDCCA5 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 was taken by the Revenue u/s 65B of the Mobile Phone of Kolla Madhav Abhilash, Director, in whose mobile the alleged incriminating documents were found namely, Annexure P1 and P.2. In the light of the above, we do not find any reasons to agree with the contention of Id.DR for the Revenue that the evidence retrieved from the mobile phone is 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, is applicable against it as there is no certificate in support of its case issued under section 65B of the Act. 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. *6. 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 is more than 10 cases the registrations have taken place after the sale.*
- g. *No addition can be made on the basis of document collected during the post search 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, in whose device the said Annexure P1 was 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.*
- k. *None of the assesseees were examined by the Assessing Officer or the ld.CIT(A).*
- l. *The assesseees were not provided the copy of statements of Kolla Madhav Abhilash, Director and Shri Kolla Madhava Reddy. Further, the assesseees were not provided any opportunity to cross-examine these persons based on whose statements the admissions are made in the hands of the assesseees.*
- m. *The additions admitted by Shri Kolla Madhava Reddy before the Settlement Commission / in the statement recorded 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 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.8,79,568/- in the hands of the assessee for the Assessment Year 2017-18.

8.1. Further, the said decision is not yet stayed or over-ruled by any of the higher Judicial Forums. In view of the above circumstances, we respectfully following the decision of the co-ordinate Bench of the Tribunal passed in the case of Gavireddygari Aparna Kalyani and others in ITA No.3/Hyd/2023 and others for A.Y 2018-19 dated 28.02.2023, delete the addition in the hands of assessee. Thus, the appeal of the assessee is allowed.

9. In the result, the appeal of assessee in ITA No.300/Hyd/2023 is allowed.

10. Since identical issues were raised by the remaining assessees before us in the captioned appeals, therefore, following our reasonings given ITA No.300/Hyd/2023 (lead case) mutatis mutandis, we delete the additions made in the hands of the assessees, respectively, and thus, allow all the remaining captioned appeals.

11. In the result, all the appeals of assesseees are allowed.
The copy of the same may be placed in all respective case files.

Order pronounced in the Open Court on 25th September, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 25th September, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Siva Prasada Reddy Buchepalli, C/o. M.V. Prasad, C.A., Sanath & Rajasekhara, Chartered Accountants, Ld. DR.No.8-2-120/86/3, Krishna Sindhu Residency, Road No.03, Banjara Hills, Hyderabad.
2	Ramesh Chandra Majitha, C/o. M.V. Prasad, C.A., Sanath & Rajasekhara, Chartered Accountants, Ld. DR.No.8-2-120/86/3, Krishna Sindhu Residency, Road No.03, Banjara Hills, Hyderabad.
3	Naga Lakshmi Buchepalli, C/o. M.V. Prasad, C.A., Sanath & Rajasekhara, Chartered Accountants, Ld. DR.No.8-2-120/86/3, Krishna Sindhu Residency, Road No.03, Banjara Hills, Hyderabad.
4	ACIT, Central Circle – 2(3), Hyderabad.
5	Principal Commissioner of Income Tax (Central), Hyderabad.
6	ACIT, Central Circle – 1(2), Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File