

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ ITA. No. 522/JPR/2023  
निर्धारण वर्ष/ Assessment Years : 2018-19

Kanchan India Limited 20 Textile Market, Bhilwara.	बनाम Vs.	DCIT, Central Circle, Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AABCK 0452 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Shri C.M. Agarwal (C.A.)  
राजस्व की ओर से/ Revenue by: Shri Ajey Malik (CIT)

सुनवाई की तारीख/ Date of Hearing : 02/11/2023  
उदघोषणा की तारीख/ Date of Pronouncement : 12/12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals)- Jaipur-5 [Here in after referred as "CIT(A)"] for the assessment year 2018-19 dated 11.08.2023, which in turn arises from the order passed by the AO, passed under Section 153A r.w.s.143(3) of the Income tax Act, 1961 (in short 'the Act') dated 27.12.2019.

2. The assessee has marched this appeal on the following

grounds:-

"1. That the orders passed by the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidences, facts and circumstances of the case and are therefore liable to be quashed.

2. That on the facts and in the circumstances of the case, the Ld CIT(A) erred in law in confirming the addition of Rs 47,56,372/ to the total income of the appellant by applying GP on alleged unaccounted sales made to M/s Reebok Rose and M/s Aldoss.

2.1 That the authorities below made the addition purely on the basis of suspicion, surmises and conjectures without bringing on record any material in support of the conclusions arrived at by them.

2.2 That the Ld CIT(A) grossly erred in holding that it is also an undisputed fact that the appellant company was having its regular business with these alleged entities when all through the appellant categorically denied having entered into any transactions with these entities and the Ld AO could also not refute the submissions of the appellant even after examination of the Books of accounts of the appellant and thus the impugned order suffers from perversity of facts and law and needs to be quashed.

2.3 That the addition to the total income of the appellant cannot be made solely on the basis of offer of buying peace made by the Director of the appellant when the addition could not have been legally made to the total income of the appellant

2.4 That on the facts and circumstances of the case, the authorities below grossly erred in law in making addition on account of alleged unaccounted sales when no allegation as to the correctness of the books of accounts including the stock register was made, nor the Books of accounts presented before the authorities were found to be unreliable and were also not rejected.

The appellant craves leave to add, amend or withdraw any of the grounds of the appeal during the course appellate proceedings.

All the grounds of appeal are independent and without prejudice to each other."

3. The fact as culled out from the records is that the company was incorporated on 10.06.1996 and from 01.04.2008 by virtue of an order of Hon'ble High Court dated 25.03.2009 the various other companies of Banger Group M/s Kanchan Processors Pvt. Ltd., M/s Kanchan Woollens Pvt. Ltd., M/s Kanchan Spinners Pvt. Ltd. and M/s YJMAC Suitings Pvt. Ltd. were amalgamated in M/s Kanchan India Ltd. The assessee company is indulged in manufacturing and trading of textile and are having big name in the textile industry of Bhilwara. The assessee company had filed its original return of income on u/s 139(1) on 18.08.2018 through e-filing mode declaring therein total income of Rs.40,38,53,560/-.

3.1 A search and seizure action u/s 132 of I.T. Act, 1961, was carried out on 23.08.2017 at the residential as well as business premises of "Bangur Group of Bhilwara" and its family members including their flagship company M/s Kanchan India Ltd. situated at Mandal, Shahpura Choraha, Nanakpura (Mandal), Bhilwara Textile Market (Bhilwara). Various incriminating documents / Loose papers had been found at the time of search and some of them were also seized at various places of the group at the time of action u/s 132 of I.T. Act. A Notice u/s 143(2) along with notice u/s 142(1) and a detailed questionnaire, fixing the date of hearing on

07.01.2019 were issued on 26.12.2018 digitally signed and sent on e-mail as well as Registered Post. Since, no reply was received of the said questionnaire and notices issued, a show cause letter dated 26.07.2019 was issued asking the assessee as to why ex-parte assessment may not be proceeded as per provision of section 144 of the Act and a show cause notice for penalty u/s 271(1)(b) were issued. In compliance to the same, Shri Durgesh Banger, one of the Director of the company submitted reply in detail along with various supporting documents.

3.2 During the course of search, at the business premises of M/s Kanchan India Ltd., Denim Division, 18 Mile Stone, Opp. Bhilwara Midway. "Bhilwara, some loose papers bearing No. 1 to 6 of Exhibit 6 are found which are copies of transactions entered into by the assessee company with M/s Reebok Rose and M/s Aldoss as alleged by the Id. AO. The assessee company questioned about these transactions and ledger account of said concern in the books of the company for A.Y. 2016-17, 2017-18 and 2018-19 were called for. Simultaneously, the bank statement of the assessee company was also asked to be furnished in order to get verify the transactions mentioned in the said loose papers. In reply to the same, the assessee company's Director, Shri Nilesh Banger

reiterated the earlier version of having no connection with the relevant seized paper with their concern and these papers are not part of their account and even not taken print from any of company's computer server. He further stated that without prejudice to that if deem it fit, it may be treated sales out of books and suitable G.P. rate may be applied. In support of its contention, he has quoted decision of the Rajasthan High Court conferred in the case of Clarity Gold Pvt. Ltd. v/s PICTGEM Mart India Pvt. Ltd. [2019] 306 CTR 93 (Raj) and it was held that only to the extent of estimated profits embedded in the unaccounted sales for which the net profit rate was adopted entailing addition of income on the suppressed amount of sales.

3.3 The Id. AO contended that the submission of the Director of the assessee company has been considered and considering his absolute denial of ownership over the seized papers is not acceptable for the reason, the same were seized from the factory premises of the company and availability and connection of the same with them cannot be ruled out. However, it is logical that the entire such sales started by the company in the F.Y. 2015-16 and executed the transactions till 16.08.2017, cumulatively amounting to Rs. 1,80,25,387/- in the case of M/s Reebok Rose and similarly

the transaction for M/s Aldoss were started from F.Y. 2016-17 and executed till 09.08.2017 amounting to Rs. 6,34,95,534/-. Thus, the total undisclosed sale from M/s Reebok Rose and M/s Aldoss calculated at Rs 8,15,20,921/-. From the trading account of the assessee company for the A.Y. 2018-19, it is seen that in the year under consideration the company has declared gross profit rate of 13.64% and same is applied upon the undisclosed gross sale which comes to Rs. 1,11,19,454/- and the same was added to the total income of the assessee company.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Concerning to the issue assessee and on the various grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“6.2 I have considered the facts of the case and written submission of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration.

6.3 It is an undisputed fact that the alleged documents were found and seized from the business premises of the assessee company. It is also an undisputed fact that the assessee company was having its regular business with those alleged entities so connection of these seized documents and unrecorded transactions mentioned on these papers cannot be ruled out. Further, during the course of search proceedings the Director of the company Mr Nilesh Banger in his statement had voluntarily admitted and surrender the alleged transaction as their unaccounted sale and had offered the GP rate profit as unaccounted business income of the appellant company. Thus the arguments that

the papers were rough and no addition can be made in absence of corroborative material are not acceptable.

6.4 Further the appellant had also submitted that the all such transaction is not related to AY 2018-19 i.e. the year under consideration and the AO had wrongly added all the estimated profit in one year instead of 3 years. The appellant had submitted without prejudice that even if profit is required to be estimated on such unrecorded sale then all such profit should not be estimated in one year.

6.5 The contention of the appellant is seems to be on merit. The AO had himself stated in the assessment order that such unrecorded sales written on the seized documents in the case of M/s Reebok Rose were started in the FY 2015-16 and executed the transactions till 16.08.2017 cumulatively amounting to Rs. 1,80,25,387 and similarly the transaction for M/s Aldoss were started from FY 2016-17 and executed till 09.08.2017 amounting to Rs. 6,34,95,534/-. Thus total undisclosed sale from M/s Reebok Rose and M/s Aldoss comes to Rs. 8,15,20,921/-. The AO had estimated GP at rate 13.64 and calculated the unaccounted income/ profit at Rs. 1,11,19,454/-. The AO made this addition in one assessment year only i.e. the year under appeal (FY 2017-18 AY 2018-19).

6.6 Transactions of unaccounted sale recorded on seized material was date wise and related to 3 years starting from FY 2015-16, 2016-17 and 2017-18. The AO had himself mentioned and admitted this fact in the assessment order. Therefore, adding all the unaccounted income in form of GP estimate in one year is not correct.

6.7 The appellant had submitted that the sales mentioned in alleged papers for the year under consideration is only Rs. 3,48,70,764/- (Rs. 45,51,840/- for Reebok and Rs. 3,03,18,924/- is for Aldoss). Thus, by applying GP rate of 13.65% the unaccounted income for the year under consideration comes at Rs. 47,56,372/-.

6.8 Considering the above discussion addition of Rs. 47,56,372/- is sustained and balance is hereby deleted. Thus, the ground of appeal on this issue is hereby partly allowed. If deemed fit, the AO is free to take necessary action for other years as per the provisions of Income Tax Act.

7. The ground no. 3 and 4 are consequential in nature. Therefore no needing any specific adjudication and are accordingly treated as dispose off.

8. The appellant has not added or altered, amend or withdraw any of the above mentioned grounds of appeal. Accordingly, such mention by the appellant in its ground is treated as general in nature, no needing any specific adjudication and is accordingly treated as dispose off.

9. In the result, the appeal is treated as partly allowed.”

5. As the assessee did not receive the favor in full from the appeal so filed before the Id. CIT(A), the assessee prefers the present appeal. The Id. AR appearing on behalf of the assessee has placed on record his written submission and same is reiterated here in below:-

**“Brief Facts-**

Most humbly it is submitted that return of Income for the A.Y. 2018-19 was filed on 18.08.2018 at an income of Rs 40,38,53,560/. Assessment u/s 143(3) of the income Tax Act was completed by the Ld Assessing Officer Central Circle- Ajmer on 27.12.2019 at an income of Rs 41,49,73,014/ after making an addition of Rs 1,11,19,454/ to the total income of the appellant on account of profit arising from alleged undisclosed sales. Aggrieved by the order of the Ld Assessing Officer, the appellant preferred appeal before the Ld CIT(A) Jaipur -5 who vide impugned order dated 11/08/2023 sustained the addition to the tune of Rs 47,56,372/

Aggrieved by the order of the Ld CIT (A) the present appeal has been preferred.

**Submissions in respect of Grounds of appeal:**

It is humbly submitted that the Ld Assessing Officer made an addition of Rs 1,11,19,454/ on account of undisclosed gross profit arising from alleged unaccounted sales aggregating to Rs 8,15,20,921/ made to M/s Reebok Rose and M/s Aldoss. Ld CIT(A) confirmed the addition of Rs 47,56,372/ by observing that AO himself mentioned that unaccounted sales pertain to 3 financial years, 2015-16,2016-17 & 2017-18, and by applying GP on alleged unaccounted sales made to M/s Reebok Rose and M/s Aldoss during the F.Y.2017-18, the undisclosed income for the

year comes to Rs 47,56,372/, and thus provided part relief to the appellant for the impugned assessment year.

It is submitted that during the course of search at the premises of the appellant certain loose papers were found and seized. Some loose papers found during search (No 1 to 6 exhibits 6 to be precise) bear the description 'ledger account' of M/s Reebok Rose and ledger account of M/s Aldoss. The said loose papers nowhere bear the name of the appellant or any of the group concern of the appellant. During the course of assessment proceedings, the Ld Assessing Officer required the appellant to get these transactions verified from its Books of accounts as well as from the Bank statements. It was submitted to the LD AO that the said documents have no connection whatsoever with the appellant, the seized papers are not part of its account books and these prints have not been taken from any of the computer servers of the appellant.

However, Ld Assessing Officer was not satisfied with the explanation and discounted the same by observing that the absolute denial of ownership over the seized papers is not acceptable for the reason the same were seized from the factory premises of the appellant company and connection of the same with them cannot be ruled out.

Evidently, the Ld Assessing Officer made addition only on the basis of assumptions, presumptions, surmises and conjectures. No corroborative evidence in support of the allegations of unaccounted sales has been found or brought on record by the Ld Assessing Officer. The addition has been made by the LD AO merely by observing that absolute denial of ownership over the seized papers is not acceptable for the reason the same were seized from the factory premises of the appellant company and connection of the same with them cannot be ruled out. However, the LD AO failed to bring any evidence of any sort relating the transactions in the loose papers to the appellant in any manner except surmising that connection with the appellant cannot be ruled out.

It is most humbly submitted that it is settled law that suspicion how so ever strong it may be, cannot take the place of proof. { Lalchand Bhagat Ambica Ram Vs CIT 37ITR 288(SC)}.

Before the Ld CIT (A) it was pleased that:

- i. Seized documents nowhere contain the name of the appellant
- ii. These are rough papers and strike off
- iii No addition can be made in the absence of any corroborative material
- iv. That on these papers the heading is 'my wish list'

v. These are dumb papers.

However, none of the contentions made before the Ld CIT (A) found favour with him. Ld CIT (A) rejected the contentions of the appellant with the following observations:

“It is an undisputed fact that the alleged documents were found and seized from the business premises of the assessee company. It is also an undisputed fact that the assessee company was having its regular business with those alleged entities so correctness of these seized documents and unrecorded transactions mentioned on these papers cannot be ruled out. Further, during the course of search proceedings, the Director of the company Mr Nilesh Bangar in his statement had voluntarily admitted and surrendered the alleged transactions as their unaccounted sales and had offered the GP rate profit as unaccounted business income of the appellant’

Thus it is evident that decision of the Ld CIT (A) rests on the following 2 based his decision on the following twin fully rebuttable postulates;

- i. The Appellant was having regular business with the alleged entities i.e M/s Reebok Rose and M/s Aldoss
- ii. Director of the assessee company in his statement voluntarily admitted the alleged transactions.

**Appellant not having any business with either M/s Reebok Rose or M/s Aldoss;**

The observations of the Ld CIT (A) are not only based on assumptions and surmises but suffer from gross perversity of facts too. Before both the lower authorities, the appellant vehemently denied having any connection with these documents. The appellant had no connection whatsoever either with M/s Reebok Rose or with M/s Aldoss. The appellant is not even aware of the status or location of these concerns. It is emphatically submitted that the appellant never had any business connection whatsoever with these persons/entities namely M/s Reebok Rose or M/s Aldoss. Observations of the Ld CIT(A) that it is an undisputed fact that the assessee company was having its regular business with those alleged entities so correctness of these seized documents and unrecorded transactions mentioned on these papers cannot be ruled out, is simply a figment of his own imagination. The appellant never had any business of any sort with these concerns.

**Director of the appellant admitted the alleged transactions in his statement;**

Statement of the Director without any corroboration cannot form the basis of additions to the total income. Law in this regard is well settled. The documents found during search are dumb documents, documents nowhere bear the name of the appellant, cannot be correlated to the

Books of accounts of the appellant in any manner and there is no evidence of appellant having done any transactions with either of the party. In this regard the appellant places reliance on the following judicial pronouncements;

CIT Vs Ashok Kumar Jain 369 ITR 145 (Raj)

Shree Ganesh Trading Co Vs CIT 257 CTR (Jharkhand) 159

Avishkar Infrastructure Pvt Ltd Vs DCIT (ITA No7165/MUM/2011 dated 17.06.2015)

DCIT Vs NIBR Bullion Pvt Ltd (ITA No 6320/MUM/2011 dated 05/12/2022)

Since the order of the Ld CIT(A) is based on grossly misplaced assumption that the appellant was having its regular business with these alleged entities, the order of the Ld CIT(A) and consequent sustaining of addition though in part, by him is totally bad in law, the same deserves to be quashed. It is prayed accordingly. The appellant submits that the addition made by the Ld AO and sustained by the Ld CIT (A) merely on the basis of statement of the Director given during search without bringing on record any corroborative evidence deserves to be deleted for the following reasons:

- i. The additions made purely on the basis of suspicion, surmise and conjectures without bringing on record any material in support of the conclusions arrived at by them is not sustainable in law.
- ii. The addition has been sustained by the Ld CIT (A) on complete misconception of facts to the effect that the appellant company was having its regular business with these alleged entities.
- iv. The LD Assessing Officer even after examination of the Books of accounts of the appellant could not bring any corroborative fact on record.
- v. Addition cannot be sustained solely on the basis of offer of buying peace made by the Director of the appellant during the course of search when the addition otherwise could not have legally been made to the total income of the appellant.
- vi. None of the authorities below made any allegation as to the correctness of neither the books of accounts including the stock register nor the Books of accounts presented before the authorities were found to be unreliable and were also not rejected.

The appellant also places reliance on the following judicial pronouncements in support;

Addition on the basis of loose papers without any corroborating evidence cannot be made;

Prarthana Construction Pvt Ltd Vs DCIT( 2001) 70ITJ(Ahd) 122

ITO Vs Kranti Impex Pvt Ltd (ITA No 1229/MUM/2013 dated 28.02.2018)

Pioneer Publicity Corporation & others Vs DCIT 67TTJ471 (Delhi Trib)

Saif Ali Khan Mansurali Vs ACIT (ITA 1091/MuM/2009 Dated 23.09.2011)

Anil Bala Goyal & Ors Vs DCIT& Ors (ITA No 1533/Del/2021 dated 19.6.2023)

Mansukh Timbadia Vs ACIT (ITA No 1713/Pun/2015 Dated 22.07.2022)

PCIT Vs Nexus Builder & Developers Pvt Ltd (2022) 285 Taxman 233(Bom)( HC)

ACIT Vs Ganpati Developers (ITA No 1348/JP/2018 Dated 30.03.2021)

In view of the above submissions it is prayed that the addition sustained by the Ld CIT (A) be deleted.”

6. In addition to the above written submission so filed by the Id. AR of the assessee he further submitted that the Id. CIT(A) has not considered the fact that in the course of search no loose paper or evidence of the unaccounted transaction found. The Id. AR of the assessee argued that during search there was neither the excess nor shortage of cash or stock found. Thus there is no direct or indirect evidence that even transactions are out of books transaction. To support this contention the Id. AR of the assessee relied upon the decision in the case of ACIT vs. M/s Shri Ganpati

Developers in ITA No. 1348/JP/2018 and CO No. 08/JP/2019 dated 30.03.2021. He also supported the finding on para 8 of the Id. CIT(A) stating that in the absence of comprehensive explanation of unaccounted transaction the addition of Gross Profit confirmed to the extent of the revised turnover is also required to be deleted.

7. Per contra, the Id. DR supported the order of the lower authorities and submitted that the Id. CIT(A) has already considered the merits of the case and granted the substantial relief to the assessee as the Id. AO has considered all the three year turnover and added the profit for all the three year in the year under consideration has been appreciated and the assessee got the substantial relief.

8. In the rejoinder of the Id. AR of the assessee submitted that the Revenue cannot be take the please that substantial relief has been given. The fact of adding three-year GP in one year is a mistake and not a relief to the assessee. The Id. CIT(A) has also not decided the ground no. 1 raised by the assessee submitting that the Id. AO has made the addition on a unrelated documents on presumption and assumption without bringing any corroborative

evidence on record. Thus, the action of the Id. CIT(A) not deciding the ground no. 1 is incorrect and in support he relied on the decision of the Coordinate Bench in the case of ACIT vs. M/s Shri Ganpati Developers in ITA No. 1348/JP/2018 & CO No. 08/JP/2019 dated 30.03.2021. Considering these aspect of the matter he prayed that the based on the fact that the document relied upon by the revenue has no relation to the alleged unaccounted business and the same is dump document.

9. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home their respective contentions. The Bench noted that out of the turnover determined as undisclosed sales for an amount of Rs. 8,15,20,921/-. The Id. CIT(A) has considered it to the extent of Rs. 3,48,70,764/- for the year under consideration. The Revenue has not challenged this decision of the Id. CIT(A) and therefore, now the issue remains before us is that considering the seized documents and in the facts and circumstances of the case the alleged undisclosed sales of Rs. 3,48,70,764/- is in fact an undisclosed transaction of the assessee or not. The Bench noted that the Id. AR of the assessee before both the lower authorities categorically submitted and argued that

based on the documents seized, the contention of the lower authorities in considering that transactions as undisclosed sales is purely based on the assumption, presumption and surmises. The assessee vehemently argued that i. Seized documents nowhere to contain the name of the appellant, ii. These are rough papers and strike off, iii No addition can be made in the absence of any corroborative material, iv. That on these papers the heading is 'my wish list', v. These are dumb papers.

9.1 These contentions of the assessee were not considered by the Id. CIT(A) stating that the documents were found and seized from the business premises of the assessee. Further we note that decision of the Id. CIT(A) is mainly based on the two contentions that the assessee was having regular business with the alleged entities i.e M/s Reebok Rose and M/s Aldoss and secondly Director of the assessee company in his statement voluntary admitted the alleged transactions. The Id. AR of the assessee submitted that the lower authorities have not considered the contention of the assessee that the addition is based on assumptions and surmises but suffer from gross perversity of facts too. The Id. AR of the assessee further submitted that the assessee is shouting from the terrace before both the lower authorities, since beginning and

saying that the assessee has no connection either with M/s Reebok Rose or with M/s Aldoss. The assessee is not even aware of the status or location of these concerns and the assessee never had any business connection whatsoever with these persons/entities namely M/s Reebok Rose or M/s Aldoss. Observations of the Id CIT(A) that it is an undisputed fact that the assessee company was having its regular business with those alleged entities so correctness of these seized documents and unrecorded transactions mentioned on these papers cannot be ruled out, is simply an illusion without any finding and support. The contention of the assessee that the assessee has never had any business of any sort with these concerns is not considered and even though these facts submitted there is no finding in the order of the lower authority to this effect based on any evidence. As the statement of the director the same cannot alone be read without any corroboration and cannot form the basis of additions to the total income of the assessee. The documents found during search are dumb documents, documents nowhere bear the name of the assessee, never be correlated with the Books of accounts of the assessee. The bench also noted that in the same page transaction of bank are also recorded and there is no efforts made to reveal the

correctness with the books of the assessee that whether the transactions recorded are part of the books or not. Thus, there is complete lack of enquiry against the contentions raised by the assessee and simply based on the statement the addition of GP was made in the case of the assessee. It has been argued that except these documents which has no relation to any unaccounted sales as alleged there is no other corroborative evidence or no iota of doubt about the shortage or excess of cash or stock which suggest the unaccounted sales and purchase by the assessee. So the allegation of the revenue is purely based on surmises and conjecture without any evidence and is required to be deleted. To drive home to this contention the reliance was placed on the following judicial pronouncements;

CIT Vs Ashok Kumar Jain 369 ITR 145 (Raj)

Shree Ganesh Trading Co Vs CIT 257 CTR (Jharkhand) 159

Avishkar Infrastructure Pvt Ltd Vs DCIT (ITA No7165/MUM/2011 dated 17.06.2015)

DCIT Vs NIBR Bullion Pvt Ltd (ITA No 6320/MUM/2011 dated 05/12/2022)

9.2 The bench also noted that the Id. Assessing Officer even after examination of the Books of accounts of the assessee could not bring any corroborative fact on record. Thus, addition cannot

be sustained solely based on offer of buying peace made by the Director of the assessee company during the course of search when the addition otherwise could not have legally been made to the total income of the assessee. The bench also noted that none of the authorities below made any allegation as to the correctness of neither the stock register nor the Books of accounts presented before the authorities were found to be unreliable and were also not rejected. The bench also thus considering the facts of the case in that case that a) Seized documents nowhere to contain the name of the assessee, b) These are rough papers and strike off, c) No addition can be made in the absence of any corroborative material brought on record d) That on these papers the heading is 'my wish list' and there is no relation established that wish list to the business of the assessee e) The assessee has not done any business with these concerns f) These paper contains transaction with the bank and there is no finding that these transactions are of the assessee. Thus, we do not hesitation to say these document is dumb papers and without establishing any relation with the assessee no addition can be made considering the various decision cited by the assessee. The Coordinate Bench Jaipur has in the case of decision in case of ACIT vs. M/s Shri Ganpati

Developers (Supra) also supports the case of the assessee wherein it was held as under:-

“8. From perusal of the impugned order, we observed that the Id. CIT(A) restricted the addition by holding that by making addition, the A.O. made a basis on a paper (loose sheet) found in possession of Sh. B.D. Mundra, one of the partners in the assessee firm during the course of search proceedings on Mundra Group on 13/08/2013 & as intimated to the present A.O. by DCIT Central Circle, Kota. The seized document is detailed at page 2&3 of the assessment order. As per the A.O. the difference between the sale price mentioned in the page no 9 of Annexure AS-2 (of the seized documents) and that shown in the books of accounts in respect of a flats sold comes to Rs. 1,85,30,430/-. The assessee in response to show cause given by the A.O. in this regard mentioned that the paper (Annexure AS-2 having 65 pages) was a rough working and had no link with the actual sale. He mentioned that the actual flats sold were not to the same persons in all cases and there were different prices due to buyers opting for 'skeleton' or 'completed' flats as well. As per the statement copy of the partner recorded at the time of the post-search proceedings u/s 131 on various dates viz. 17.10.2013, 18.10.2013, 22.10,2013, 24.10.2013, 8.11.2013, 09.11.2013, 11&12.11.2013 and on the relevant annexure AS-2 mostly on 13.11.2013, it is noted that Sh. Anil Mundra, Partner, has in response to the questions related to annexure AS-2 pages 4 to 65 mentioned and elaborated the details of each page which includes the booking forms, agreement, floor plans, area details and said that page no. '9' was a 'dummy sheet' whereby some name of actual buyers and some dummy partners' names are written. He has also mentioned that some buyers initially opted for fully furnished flats & later opted for "skeleton" flats so the difference in price was there but the agreements were finally registered on actual prices. For some flats, part amounts were received till then & some of the partners namely Sh. Ashok Maheshwari, Rajendra Jain, Anil Mundra himself & Bhuvanesh Lahoty's names were on the sheet so as to show to prospective buyers that only a few flats were available for sale. The Id. CIT(A) has further held that the A.O. has not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by the assessee outside the books of accounts to match with the figures of difference appearing in the loose sheet. In fact he did not even cross check with the partner Sh. Anil Mundra & others regarding the same to establish any difference in their version given at the

time of search. Even in the course of the search proceedings nothing has been brought on record so as to establish any agreements to sell evidencing any cash or unaccounted consideration passing hands between the buyers and the assessee. The Id. CIT(A) has also held that if the A.O. was convinced that the assessee had suppressed the sale of Rs. 1.85 crores, he should have taxed the profit on the same because if the rate of Rs. 3550/-per square feet was true, then the expenses would also be equally reducible and he has nowhere worked out that there were bogus expenses claimed against the actual sale shown. The A.O. never made out a case u/s 69C against the buyers or referred the same to their respective A.O. if he really wished to take the matter to a logical conclusion. The absence of the above two steps shows that he made the addition causally and without actually going into the depth of the issue and reaching conclusive findings through proper examination of evidences & persons. The 'Skelton' flats' rate is coming to Rs. 3200 to Rs. 3400/- per square feet itself while the 'completed' or 'fully furnished' flat is sold @ 4967/- which difference if not real, would involve an adverse finding from both the service tax department as well as the SRO for tax avoidance if some flats of same measurement are sold at different rates to 'accommodate' cash proceeds. No adverse findings have been gathered by the A.O. from these two departments in respect of the assessee's project. The service tax ledger account shows flat wise tax paid from 2011 to 2016 even on individual payments credited. Hence, just on the basis of one loose sheet of paper with miscellaneous, unconfirmed 86 uncorroborated notings, to make an addition of Rs. 1,85, 30,430/- is not fair as this would also mean a suppressed sale of about 25% against the shown project revenue and jack up the profit to 30% (5.43% already shows) which appears to be astronomical as well as impractical on a single project. The addition dwells more in the realm of presumption than real. Thus, it is clear that the A.O.'s examination of the Annexure AS-2 was very casual and not based either on the possible further enquiries or workings or on the appreciation of statements and change in the status of several flats & owners. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition. Considering the totality of facts and circumstances, we found that the Id. CIT(A) has passed a speaking and reasoned order discussing all the details of the case of the assessee, therefore, we do not find any reason to interfere into or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same. This ground of the Revenue's appeal is dismissed."

9.3 Considering the above discussion so recorded, the Bench feels that the additions made and sustained to the extent for the year under consideration is purely based on the surmises and conjectures and without any corroborative evidence placed on record. The Bench feels that lower authorities has considered it has unaccounted sales without making any enquiry and without rejecting the books of account and not a single defect in the books of account or stock records produced by the assessee. During search neither there is excess nor shortage of stock or cash found. Therefore, merely based on the statement of the director of the assessee the addition cannot be sustained and considering the discussion so recorded hereinabove the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 12/12/2023.

Sd/

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 12/12/2023

\*Santosh

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Kanchan India Ltd. Bhilwara.

2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 522/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar