

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.631/Chny/2023
निर्धारण वर्ष/Assessment Year: 2016-17
&
Cross-Objection No.29/Chny/2023
निर्धारण वर्ष/Assessment Year: 2016-17

The Asst. Commissioner- of Income Tax, Central Circle-2, Madurai.	v.	M/s.VIBGYOR Net Connections, Novel Tech park, #46/4, GB Palyakudlu, Bommanahalli So.O., Hosur Main Road, Bangalore-560 068. [PAN:ABKFS 9824 P]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
Department by	:	Shri. Nilay Baran Som, CIT
Assesseeby	:	Shri. M.V.Prasad, CA
सुनवाई की तारीख/Date of Hearing	:	28.12.2023
घोषणा की तारीख /Date of Pronouncement	:	19.01.2024

आदेश / ORDER

PER MANJUNATHA.G, AM:

This appeal filed by the Revenue and Cross-Objection filed by the assessee are directed against the order passed by the Commissioner of Income Tax (Appeals)-19, Chennai, dated 31.03.2023, and pertains to assessment year 2016-17. Since, facts are identical and issues are common, for the sake of convenience, the appeal filed by the Revenue

and Cross-Objection filed by the assessee, were heard together and are being disposed off, by this consolidated order.

2. The Revenue has raised the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the addition of Rs.51,53,55,000/- made u/s.69A of the Act towards receipt of unaccounted money on sale of property based on the material seized in the search case of M/s.PolisettySomasundarm.

2.1 The Ld, CIT(A) observed that Shri.YelluriChandrasekara Rao, representative of M/s.PoisettySomasundararn explained that cash was carried to purchase tobacco from farmers and dealers in Bangalore and not referred the property transaction with assessee. The CIT(A) failed to appreciate that he had not substantiated his claim with evidence like details of farmers/agents from whom tobacco was purchased, invoices and payment details etc. The credibility of the statement that such a huge amount was sent for purchasing tobacco on a single day is questionable.

2.2 The Ld.CIT(A) observed that Shri.YelluriChandrasekara Rao admitted on money payment in respect of certain property transactions in Bangalore, but not made any reference to the property sold by the assessee. The CIT(A) failed to appreciate that he did not specify the details of property transaction in Bangalore but the date of transport of cash was 31/12/2015 closest to the date of 23/12/2015 on which the property purchased from the assessee was registered and AO correctly inferred that the payment is related to property transaction between assessee and M/s.Polisettv_Somasundaram.

2.3 The Id.CIT(A) erred in observing that the incriminating material found during the course of search in the case of M/s.Polisettysundaram is a "dumb document" and cannot be relied on without corroborative evidence, without appreciating that the evidence found was indeed cash book containing date, nature of transaction and amount. Further, based on circumstantial evidences, the AO concluded that the assessee was in receipt of on money sale of property.

2.4 The Ld,CIT(A) erred in failing to appreciate that there Is no such restrictive interpretation in the Section 132(4A) that the presumption of correctness are applicable only in respect of the books of accounts/documents seized in the premises of searched person and not from third party.

2.5 The Ld.CIT(A) failed to appreciate that the AO has reasonably arrived that the assessee was in receipt of on money on sale of property, considering the circumstantial evidence in nature like the date of transaction mentioned in the seized materials, date of registration of property, non-submission of proof by the assessee in support of purchase of tobacco, nature and value of the property sold.

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3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

3. The brief facts of the case are that the assessee is a partnership firm, which is engaged in the business of developing and renting of immovable properties and interior infrastructures. A search u/s.132 of the Income Tax Act, 1961, (in short "the Act") was conducted in the case of the assessee and its partners on 04.03.2020. The said search was conducted consequent to search conducted in the case of M/s.Polisetty Somasundaram on 28.01.2020. During the course of search, in the case of M/s.Polisetty Somasundaram, incriminating evidences in the form of cash book containing details of cash transactions were found and seized. The transactions entered in the cash book shown that on 31.12.2015 'Bangalore' cash payment made Rs.51,53,55,000/- and also 'cash carrying charges to Bangalore', Rs.10,75,000/-. On further enquiry, it was found that M/s.Polisetty Somasundaram Group had purchased an immovable property at Bangalore on 23.12.2015 for a consideration of Rs.99 Crs. from the assessee vide registered Sale Deed dated 23.12.2015. During the course of search, u/s.132 of the Act, in the case of M/s.Polisetty Somasundaram, a sworn statement of Shri. Yeluri Chandrasekhar Rao, Authorized Representative of M/s.Polisetty Somasundaram, was recorded on 05.03.2020 and confronted with the impounded excel sheet cash book. Shri. Yeluri Chandrasekhar Rao had given explanation to cash book entries dated 31.12.2015 and stated that

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the firm has sent Rs.51,53,55,000/- cash to Bangalore for purchase of tobacco from farmers in the Mysore region. He further admitted that on-money has been paid in connection with one property transactions at Bangalore. However, clearly denied that entries recorded on 31.12.2015, cash payment to Bangalore, is nothing to do with property transactions with M/s.Vibgyor Net Connections. Further, during the course of search proceedings in the case of the assessee on 04.03.2020, incriminating evidences forwarded by the DDIT (Investigation) were confronted to Shri S.Mahalingam, partner and founder of M/s.Vibgyor Net Connections, and in response to specific question, he has denied receipt of on-money towards sale of property to M/s.Polisetty Somasundaram on 23.12.2015.

4. Consequent to search, notice u/s.153A of the Act dated 11.01.2021 was issued and served on the assessee. In response to notices u/s.153A of the Act, the assessee has filed its return of income for AY 2016-17 on 25.01.2021 admitting total income of Rs.45,92,61,991/- as per the return of income filed u/s.139(1) of the Act. The case was selected for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to explain 'as to why' on-money received towards sale of property amounting to Rs.51,53,55,000/- should not be treated as unexplained money u/s.69A of the Act. In response, the assessee submitted that the firm has not received any on-money towards sale of property at Bangalore to M/s.Polisetty Somasundaram on 23.12.2015. The assessee further stated that entire sale consideration of Rs.99 Crs. as

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stated in the registered Sale Deed dated 23.12.2015, has been received through proper banking channel and that no on-money has been received in cash. The assessee further submitted that the guideline value of the property as per the SRO was at Rs.43,31,18,700/- and as against this, stated sale consideration as per the Sale Deed is Rs.99 Crs. which is more than double value of guideline value. Therefore, allegation that the assessee has received on-money which has been transported to Bangalore on 31.12.2015 is nothing but a suspicion and surmise without there being any corroborative evidences to prove that on-money has been exchanged for sale of property.

5. The AO, however, was not convinced with the explanation of the assessee and according to the AO, although, Shri Yeluri Chandrasekhar Rao, Authorized Representative of M/s.Polisetty Somasundaram, stated that cash was sent to Bangalore, for purchasing tobacco from Mysore area, but he was unable to state the name of the person through whom the cash was sent. He could not produce any further details such as invoice or names of parties from whom the purchase of tobacco was made. The AO further observed that he has admitted in the statement recorded u/s.132(4) of the Act, that on-money has been paid in respect of some property transactions made at Bangalore. However, categorically denied that cash of Rs.51,53,55,000/- sent to Bangalore for purchase of property with M/s.Vibgyor Net Connections, even though, the date of payment of cash to Bangalore and purchase of property from M/s.Vibgyor

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Net Connections, is within a week. Therefore, the AO opined that the assessee itself agreed that the actual sale value is much more than the guideline value of the property, which indirectly confirms the possibility of receiving on-money payment. Thus, rejected arguments of the assessee and made addition of Rs.51,53,55,000/- as unexplained money u/s.69A of the Act.

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed detailed written submissions on the issue which has been extracted in Para No.16 on Page Nos.9-24 of the order of the Ld.CIT(A). The sum and substances of the arguments of the assessee before the Ld.CIT(A) are that additions made by the AO towards unexplained money u/s.69A of the Act, is purely on the basis of 'dumb document' without any reference to name of the assessee or the property sold by the assessee to M/s.Polisetty Somasundaram is unsustainable in law. The assessee further submitted that neither the purchaser admitted to have paid on-money nor the assessee agreed that he has received on-money for sale of property. The so-called cash book found in the possession of the seller does not indicate the purpose, for which, money has been sent to Bangalore. Further, the employee of the seller's firm has categorically admitted that cash has been sent to Bangalore for purchase of tobacco and also said cash sent to Bangalore is nothing to do with property transactions with the assessee. The consideration paid for sale of

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property is much higher than the guideline value of the property as per the SRO, which indicate the stand of the assessee that the question of receipt of on-money for sale of property does not arise. Therefore, the assessee submitted that the AO is erred in making additions towards on-money for purchase of property u/s 69A of the Act.

7. The Ld.CIT(A) after considering relevant submissions of the assessee and also by relying upon certain judicial precedents, deleted additions made by the AO towards purported on-money receipt for sale of property as unexplained money u/s.69A of the Act, by holding that cash book in excel sheet seized in the case of M/s.Polisetty Somasundaram is a 'dumb document', since, it did not contain any information regarding the purpose for which said cash was sent to Bangalore and the person to whom the cash was subsequently paid, and thus, the AO should not have relied upon the 'dumb document' to make additions towards receipt of on-money u/s.69A of the Act. The Ld.CIT(A) further held that there is no admission of transactions of on-money payment in the statement recorded u/s.132(4) of the Act, either in the case of M/s.Polisetty Somasundaram or in the case of the assessee. Further, Shri Yeluri Chandrasekhar Rao, the Authorized Representative of M/s.Polisetty Somasundaram had denied the payment of on-money by M/s.Polisetty Somasundaram, in a statement dated 06.03.2020 recorded during the course of search. Further, Shri S.Mahalingam, Managing Partner of the assessee's firm, had also denied receiving any on-money in cash in

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respect of property transactions dated 23.12.2015 in a statement recorded during the course of search. Therefore, the Ld.CIT(A) opined that despite absence of incriminating evidences in the seized materials or any admission of on-money transactions in the sworn statement u/s.132(4) of the Act, the AO arrived at a conclusion regarding payment of on-money only on the basis of proximity of '9' days between the date of registration of property at Bangalore and the date of sending cash to Bangalore. Therefore, the Ld.CIT(A) opined that such findings by the AO without any other material/evidences to show that said cash was utilized for the purpose of payment of on-money is nothing but a mere suspicion, conjecture and surmise. The Ld.CIT(A) further held that findings of the AO that recorded sale consideration in the registered Sale Deed, is much more higher than the guideline value of the property has indirectly confirmed the possibility of receiving on-money payment is irrational and clearly in the nature of surmise. Had recorded sale consideration being less than the SRO guideline value, there could have been suspicion that the sales transaction has been suppressed on record and on-money payment has been made, but there is no scope for such suspicion when the recorded sale consideration is much higher than the SRO guideline value. Moreover, any suspicion can only be a starting point for further investigation to gather necessary supporting evidence and suspicion alone cannot be the basis for any addition. Therefore, the Ld.CIT(A) opined that the AO is erred in making additions towards purported on-money

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payment for sale of property on the basis of a 'dumb document' without there being any corroborative evidences to prove that on-money has been exchanged for sale of property transaction. Thus, directed the AO to delete additions made towards unexplained money u/s.69A of the Act. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us.

8. The Ld.DR, Shri Nilay Baran Som, CIT, submitted that the Ld.CIT(A) erred in deleting the addition of Rs.51,53,55,000/- made u/s.69A of the Act, towards receipt of unaccounted money on sale of property based on materials seized in the search of M/s.Polisetty Somasundaram without appreciating the fact that there is a close proximity between date of sale of property by the assessee and date of transfer of cash to Bangalore. The Ld.DR further submitted that although, Shri Yeluri Chandrasekhar Rao admitted to have paid on-money in respect of certain property transactions at Bangalore, but the Ld.CIT(A) summarily accepted the arguments of the assessee that there is no admission of on-money payment for purchase of property from the assessee, even though, circumstantial evidences clearly shows that there is a possibility of payment of on-money to the assessee. The Ld.DR further submitted that the cash book found during the course of search in the case of M/s.Polisetty Somasundaram clearly shown payment of cash at Bangalore along with cash handling charges. Although, Shri Yeluri Chandrasekhar Rao stated that said cash was carried for purchase of tobacco from

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farmers at Mysore region, but he has failed to file any evidences like details of farmers from whom tobacco was purchased, invoices and payment details, etc. Therefore, the Ld.CIT(A) should not have given credibility to the statement of Shri Yeluri Chandrasekhar Rao and the assessee while deleting additions made u/s.69A of the Act. The Ld.DR further submitted that the Ld.CIT(A) erred in failing to appreciate that there is no restrictive interpretation in s.132(4) or s.292C of the Act, in so far as presumption of correctness of any document or contents therein, because, the AO has reasonably arrived at a conclusion of receipt of on-money on sale of property considering the circumstantial evidences in nature like date of transaction mentioned in the seized material, date of registration of property, non-submission of proof by the assessee in support of purchase of tobacco, etc. Therefore, the Ld.DR submitted that additions made by the AO towards on-money u/s.69A of the Act, should be sustained.

9. The Ld. Counsel for the assessee, Shri M.V.Prasad, CA, supporting the order of the Ld.CIT(A) submitted that the Ld.CIT(A) has rightly apprised the facts in light of various reasons given by the AO to make addition u/s.69A of the Act, when the AO has not given any valid reason to arrive at a conclusion that the assessee has received on-money for sale of property at Bangalore. The Ld.Counsel for the assessee referring to statements of Shri Yeluri Chandrasekhar Rao and Shri S. Mahalingam submitted that neither Shri Yeluri Chandrasekhar Rao, has admitted

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payment of on-money to the assessee nor Shri S. Mahalingam has accepted receipt of on-money from M/s.Polisetty Somasundaram. The so-called cash book found from the premise of M/s.Polisetty Somasundaram does not indicate the name of the assessee firm nor the purpose of payment of on-money at Bangalore for purchase of property. Therefore, the Ld.CIT(A) has rightly held that the document relied upon by the AO is a 'dumb document' and on that basis, no addition can be made in the hands of the assessee. The Ld.Counsel for the assessee further referring to various judicial precedents submitted that provisions of Sec.132(4A) and s.292C of the Act, cannot be pressed into service in the case of the assessee with respect to contents of seized material so as to draw a rebuttal presumption that the transaction of carrying of cash to Bangalore on 31.12.2015 noted therein is related to the assessee that the same is true and correct, since said provisions operate only against the searched person in whose position the seized material was found. Further, even if it is considering for any reasons that the provisions of Sec.132(4A) and s.292C of the Act, are applicable to the assessee, the same has no bearing on the issue under consideration in absence of any reference to the name of the assessee or concerned property at Bangalore in the relevant entry in the seized cash book. The Ld.CIT(A) after considering relevant facts has rightly directed the AO to delete the additions made u/s.69A of the Act, and their orders should be upheld.

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10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have also carefully considered the purported cash book found and seized in the premise of M/s.Polisetty Somasundaram, which has been extracted in the assessment order. The seized excel sheet cash book contained certain cash transactions and as per said cash book on 31.12.2015, it was mentioned as 'cash carrying charges to Bangalore' Rs.10,75,000/- and 'Bangalore'Rs.51,53,55,000/-. During the course of search, in the case of M/s.Polisetty Somasundaram on 28.01.2020, a statement on oath u/s.132(4) of the Act, was recorded from Shri Yeluri Chandrasekhar Rao, Authorized Representative of M/s.Polisetty Somasundaram and confronted with seized document. He was specifically questioned about seized cash book and contents recorded therein and in response, he stated that on 31.12.2015, a sum of Rs.51,53,55,000/- has been sent to Bangalore for purchase of tobacco from farmers at Mysore region. He further stated that said cash payment at Bangalore is nothing to do with purchase of property from M/s.Vibgyor Net Connections on 23.12.2015. Further, impounded cash book from the search of M/s.Polisetty Somasundaram has been confronted to Shri S. Mahalingam,Managing Partner of the assessee's firm during the course of search and a statement u/s.132(4) of the Act, was recorded on 05.03.2020, in which, the Managing Partner of the assessee's firm has denied receipt of any on-money for sale of property at Bangalore. The AO made additions towards purported on-

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money u/s.69A of the Act, in the hands of the assessee on the ground that there is a close proximity between date of sale of property on 23.12.2015 and reference of cash payment at Bangalore in the seized cash book on 31.12.2015. According to the AO, although, both parties have denied exchange of on-money for sale of property, but the circumstantial evidences clearly suggest that there is a possibility of payment of on-money for purchase of property. Therefore, the AO opined that the assessee has received on-money of Rs.51,53,55,000/- towards sale of property, and thus, made addition u/s.69A of the Act.

11. We have given our thoughtful consideration to the reasons given by the AO to make addition u/s.69A of the Act, in light of various averments made by the Ld. Counsel for the assessee and we ourselves do not subscribe to the reasons given by the Assessing Officer for simple reason that, the cash book in excel sheet seized in the case of M/s.Polisetty Somasundaram did not contain any reference to the name of the assessee or concerned property at Bangalore, which merely contain notings regarding cash of Rs.51,53,55,000/- sent to Bangalore on 31.12.2015 and the corresponding expenses incurred towards cash carrying charges. No further incriminating material was found during the course of search in the case of the assessee nor in the case of search of M/s.Polisetty Somasundaram with regard to alleged payment of on-money. Moreover, the date of transfer of property was on 23.12.2015, whereas the alleged cash payment was purportedly made on 31.12.2015, which is one week

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later than the sale of property. It is a common understanding that no prudent person will transfer the property and receive cash in subsequent date. Therefore, we are of the considered view that the seized excel sheet, cash book in the case of M/s.Polisetty Somasundaram is a 'dumb document' which cannot be relied upon to make additions in the case of the assessee, since it did not contain any information regarding the purpose, for which, the said cash was sent to Bangalore and the person to whom the cash was subsequently paid. In our considered view, although, circumstantial evidences can lead to draw an adverse inference against any person, but in absence of any corroborative evidences or admission of the person from whose possession such document was found, it is difficult to draw an adverse inference based on such document without any reference to name of the person and purpose for which said payment was made. In the present case, there is no admission of the transaction of on-money payment in the statement recorded u/s.132(4) of the Act, either in the case of M/s.Polisetty Somasundaram or in the case of the assessee. Shri Yeluri Chandrasekhar Rao, Authorized Representative of M/s.Polisetty Somasundaram, has denied the payment of on-money by M/s.Polisetty Somasundaram in a statement recorded on 05.03.2020. He further stated that cash of Rs.51,53,55,000/- has been sent to Bangalore on 31.12.2015 for the purpose of purchase of tobacco in Mysore region and that the said cash is not connected in any way to the immovable property transactions dated 23.12.2015 with the assessee. Further, Shri

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S. Mahalingam, the Managing Partner of the assessee's firm had also denied receiving any on-money in cash from M/s.Polisetty Somasundaram in respect of the property transaction dated 23.12.2015. From the above, it is evident that the sworn statement recorded during the course of search also do not reveal receipt of on-money of the assessee and they do not facilitate drawing any adverse inference against the assessee. Despite, absence of any incriminating evidences in the seized materials or any admission of on-money in the sworn statement, the AO arrived at his findings regarding receipt of on-money for sale of property only on the basis of proximity of '9' days between the date of registration of property and date of sending cash to Bangalore, without any other material/evidences to show that the said cash was utilized for the purpose of payment of on-money. In our considered view, the findings of the AO regarding payment of on-money based on a 'dumb document' is purely on suspicion, conjecture and surmise manner, but not based on any evidences. In this regard, it is pertinent to refer to the decision of Hon'ble Supreme Court in the case of CIT v. Daulatram Rawatmull reported in [1964] 53 ITR 574 (SC) where it has been clearly held that suspicion however so strong, but suspicion cannot take the place of evidence. Therefore, we are of the considered view that the AO is erred in making additions towards on-money u/s.69A of the Act, without reference to any material which suggest payment of on-money merely on the basis of suspicion and surmise.

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12. Coming back to grounds of appeal raised by the Revenue, the Revenue relied upon a specific question and answer in the statement recorded from Shri Yeluri Chandrasekhar Rao, where he has admitted that on-money has been paid in connection with some property transactions at Bangalore. But, fact remains that Shri Yeluri Chandrasekhar Rao categorically admitted that reference of cash sent to Bangalore on 31.12.2015 is for the purpose of purchase of tobacco from the farmers in Mysore region, and that said cash is not connected in any way to the immovable property transactions dated 23.12.2015 with the assessee. In our considered view, whether Shri Yeluri Chandrasekhar Rao has substantiated his claim of purchase of tobacco with details of the farmers and evidences by way of invoices, etc., does not lead to any evidences of receipt of on-money by the assessee when there is no reference to either the name of the assessee or the concerned property at Bangalore in the relevant entry in the seized cash book. The entry merely shows carrying of cash to Bangalore without revealing the purpose. If the purpose as explained by Shri Yeluri Chandrasekhar Rao of M/s.Polisetty Somasundaram is not substantiated by proper evidences, cannot be viewed adversely against the assessee unless there is an evidence to show that the cash carried to Bangalore on 31.12.2015, was paid to the assessee. In our considered view, the contentions of the Revenue on the basis of statement of Shri Yeluri Chandrasekhar Rao amounts to a clear misleading or misinterpretation of the said statement going by the

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contents of answer given by him in response to a specific question. If, you go by relevant part of the statement, more particularly, Question No.9 and answer given by him, it is very clear that, he was admitted to have paid on-money over and above registered value in respect of some property transactions made at Bangalore, but he has categorically denied making any on-money payment to the assessee. This is further fortified by the findings of the AO that the recorded sale consideration in the registered document at Rs.99 Crs. is much more than the guideline value of the property at Rs.43.31 Crs. and this position has indirectly confirmed or indicated the stand of the assessee that there is no possibility of receipt of on-money. In our considered view, the AO is clearly erred in coming to the conclusion that there is a possibility of receipt of on-money on the basis of recorded sale consideration as per sale deed and guideline value by the SRO, even though, the facts are contrary to the observations of the AO. Had it been the case of the AO that recorded sale consideration was lesser than the SRO guideline value, then there could have been a suspicion that the sale consideration has been suppressed on record and on-money payment has been made. However, in the present case, there is no scope for such suspicion, because, the recorded sale consideration is almost double the amount of guideline value of the property as per the SRO. Therefore, we are of the considered view that the contention of the Revenue on the basis of statement of Shri Yeluri Chandrasekhar Rao that circumstantial evidences clearly suggest payment of on-money to the

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assessee is totally misplaced and devoid of merits. In this regard, reliance is placed on decision of the Hon'ble Madras High Court in the case of CIT v. K. Bhuvanendran reported in [2008] 303 ITR 235 (Madras), wherein, the Hon'ble Madras High Court held that additions made towards on-money receipt in the hands of the seller based solely on the statement of buyer recorded during the course of search is not tenable when no other material is available to show that on-money was paid. There is no evidence to show that there is under statement of sale consideration as per registered document. The above judgment is clearly applicable to the case of the assessee, since no other material is available regarding payment of on-money and there is no evidence to show that there is no understatement of sale consideration. Reliance is also placed on the decision of the Hon'ble Madras High Court in the case of CIT v. Smt. S.Jayalakshmi Ammal reported in [2016] 74 taxmann.com 35 (Madras), wherein, it was held that no additions can be made on the basis of a mere statement regarding payment of on-money without any corroborative evidence. In the present case, in our considered view, there was no evidence with the AO and further, there is admission from the buyer and the seller regarding payment of on-money and thus, in our considered view, the question of making additions towards on-money does not arise.

13. The AO relied upon the excel sheet called cashbook found in the premise of M/s.Polisetty Somasundaram to make addition u/s.69A of the Act. But, said incriminating material does not refer to either the name of

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the assessee or its partners nor reference to the property transaction between the assessee and M/s.Polisetty Somasundaram. We have gone through the purported cash book relied upon by the AO which has been extracted in the assessment order. The relevant entry in the seized material contained the narration Bangalore against the date 31.12.2015 and the amount of Rs.51,53,55,000/- was noted against the same. The AO based on said entry coupled with date of transfer of property presumed that the assessee has received on-money for sale of property. In our considered view, the conclusion arrived at by the AO is purely on suspicion and surmise manner, because, said document does not contain the nature of transaction nor the purpose, for which, money has been sent to Bangalore. Therefore, we are of the considered view that no arbitrary addition to the income can be made by the AO based on a 'dumb document' or a vague notings unless any other corroborative evidences which shows that the entries contained in 'dumb document' are true and correct. This legal position is supported by the Hon'ble Delhi High Court in the case of CIT v. D.K.Gupta reported in [2008] 174 taxman 476 (Delhi), wherein, it was held that a 'dumb document' without any corroborative evidence or finding that the alleged document have materialized into transaction giving rise to income cannot be used as evidence for making addition to the income. This legal position is further fortified by the decision of the Hon'ble Bombay High Court in the case of CIT v. Umesh Ishrani reported in [2019] 108 taxmann.com 437

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(Bombay). A similar view has been taken by the co-ordinate Bench of ITAT Chennai, in the case of DCIT v.Mr. A. Johnkumar, in ITA No.3028/Chny/2019. Therefore, we are of the considered view that additions made by the AO u/s.69A of the Act, on the basis of 'dumb document' cannot be sustained.

14. The Ld.DR contended that legal presumption u/s.132(4A) &s.292C of the Act, cannot be given restrictive interpretation so as to consider applicable only to the searched person and not to other person. In our considered view, the arguments of the Ld.DR is not legally tenable, because, the impugned excel sheet representing cash book containing the entry regarding carrying of cash to Bangalore was found and seized during the course of search of a third party i.e. M/s.Polisetty Somasundaram. Further, said incriminating material was not seized during the course of search in the case of the assessee. Therefore, provisions of Sec.132(4A) & s.292C of the Act, cannot be pressed into service in the case of the assessee with respect to the contents of the said seized material so as to draw a rebuttal presumption that the transaction of carrying of cash noted in the impugned documents is relating to the assessee and that the same is true and correct, since said provision operates only against the searched person in whose position the relevant materials were found. In this regard, it is relevant to refer to the decision of the Hon'ble Gujarat High Court in the case of PCIT v. Gaurangbhai Pramodchandra Upadhyay, in R/Tax Appeal Nos.98, 100, 103 & 104 of

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2020, order dated 25.02.2020, wherein, the Hon'ble Gujarat High Court in Para no.8 of the order observed that since the documents were not found or recovered from the possession of the assessee, no presumption u/s.132(4A) as well as s.292C of the Act, could be drawn against the assessee in such circumstances. The Hon'ble Patna High Court in the case of Dharmaraj Prasad Bibhuti v. ITAT, Patna, reported in [2019] 109 taxmann.com 388 (Patna) held at Para No.29 of their order that presumption u/s.292C of the Act, can be drawn only on such person from whose possession or control books of accounts or other documents, money, bullion or other valuable article are commonly found during the course of search. Even if it is considered for any reason that the provisions of Sec.132(4A) & s.292C of the Act are applicable to the assessee, the same has no bearing on the issue under consideration, because, in the said document there is no reference to the name of the assessee or the concerned property at Bangalore in the relevant entry in the seized cash book. Therefore, we are of the considered view that provisions of Sec.132(4A) & s.292C of the Act, at best lead to a rebuttal presumption that carrying of cash to the said extent by M/s.Polisetty Somasundaram is true and correct. But, the rebuttal presumption cannot extend to the receipt of such cash by the assessee in absence of any reference to the name of the assessee or the concerned property at Bangalore in the relevant document. Thus, we reject the ground taken by the Revenue.

15. At this stage, it is pertinent to refer certain judicial precedents relied upon by the Ld.Counsel for the assessee. The Ld.Counsel for the assessee has relied upon the decision of ITAT Chennai Bench in the case of Mr.Nadessan Sivapragasam v. ACIT in ITA No.112 to 114/Chny/2021. The Tribunal under identical set of facts, has held as under:

27, The Hon'ble Jurisdictional Tribunal held in the case of NadessanSivapragasam Vs. ACIT in ITA Nos. 112 to 114/ CHNY/2021 that where nothing can be discernible from the document relied upon by the AO regarding earning of income and spending for expenditure, the said document cannot be taken as evidence in the absence of any corroborative details to substantiate the entries therein. The relevant portion of the said decision is extracted as under:

15. Thus, from the above factual background, if you examine reasons given by the Assessing Officer to make additions towards unaccounted income on the basis of document found during the course of search, we ourselves do not subscribe to reasons given by the Assessing Officer for simple reason that so called document relied upon by the Assessing Officer does not show any light on unaccounted income earned by the assessee from his two business. We have carefully gone through seized document, which is part of assessment order ITA Nos. 112 to H4/Chny/2021 and jottings contained in said document The seized diary is a dumb document containing some numbers without any details of party from whom income was earned or source from which said income was generated. Similarly, the document contains some numbers without any details of party to whom it was paid and purpose of payment. It was simply recorded that on so & so date amount from supplies and same has been considered by the Assessing Officer as unaccounted income. Similarly, it was mentioned that amount paid on some date and the Assessing Officer inferred that said payment is for expenditure which is outside regular books of account and thus, the Assessing Officer has rejected debit side of the document claims to have incurred for expenditure and assessed credit side of the document as income earned from undisclosed source of income. First of all, document relied upon by the Assessing Officer cannot be considered as a document, because in the said: document nothing can be discernible, - whether earning of income and spending for expenditure. Therefore, same cannot be taken as evidence in absence of any corroborative details to substantiate entries. Therefore, we are of the considered view that the Assessing Officer has completely erred in considering IT A Nos. 112 to J 14/Chny/2021 said document and relied upon entries contained therein to come to the conclusion that the assessee has earned unaccounted income from his business.

16. The assessee had also relied upon the decision of ITAT Chennai in the case of M.M. Financiers (P) Ltd. v. DCIT reported in [2007] 107 TTJ 200 (Chennai). The co-ordinate Bench of ITAT Chennai under identical set of facts, has held as under:

28. In the case of MM Financiers (P) Limited Vs DCIT (2007) 107 TTJ 200 (Chennai), the Hon'ble Jurisdictional Tribunal held that dumb documents or documents with no certainty have no evidentiary value for the purpose of resorting to deeming provisions. The relevant portion of the decision of the Hon'ble Tribunal is extracted as under:

24. In the case of Bansal Strips (P.) Ltd. (supra), while considering the issue of seized loose papers from the residence of the assessee during the search operation though the loose papers were not in the handwriting of the assessee and belonged to the assessee, the Tribunal held that:

"There was force in the contention of the assessee that there was no provision of law under which the impugned addition could be made to the income declared by the assessee. It is trite law that if an income not admitted by an assessee is to be assessed in the hands of the assessee, the burden to establish that there is such income chargeable to tax is on the Assessing Officer. With a view to assist the Assessing Officer and to reduce the rigour of the burden that lay upon the Assessing Officer, provisions of sections 68, 69, 69 A to 69D have provided for certain deeming provisions, where an assumption of income is raised in the absence of satisfactory explanation from the assessee. As these are deeming provisions, the conditions precedent for invoking such provisions are required to be strictly construed. The facts and circumstances giving rise to the presumption have to be established with reasonable certainty. The Assessing Officer cannot first make certain conjectures and surmises and thereafter apply the deeming provisions based on such conjectures and surmises. In the absence of adequate material as to the nature and ownership of the transaction, undisclosed income could not be assessed in the hands of the assessee merely by arithmetically totaling various figures jotted down in the loose documents. In other words, for the purpose of resorting to deeming provisions, dumb documents or documents with no certainty have no evidentiary value. After consideration of the matter, the contentions of the assessee had to be agreed with. The impugned addition had been made by the Assessing Officer on grossly inadequate material. The same was, therefore, directed to be deleted."

Further, the loose papers found during the course of search at the premises of K. Madhava Reddy are a dumb form having no evidential value. No addition can be made on the basis of noting on loose sheets in the absence of corroborative material.

17. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the AO is erred in making additions towards alleged on-money received by the assessee towards transfer of property as unexplained money u/s.69A of

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the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted the additions made by the AO, and thus, we are inclined to uphold the findings of the Ld.CIT(A), and dismiss the appeal filed by the Revenue.

18. In the result, appeal filed by the Revenue is dismissed.

Cross-Objection No.29/Chny/2023 for AY 2016-17:

19. The assessee has filed Cross-Objection in support of reasons given by the Ld.CIT(A) in the order dated 31.03.2023 to delete addition made by the AO towards purported on-money received for transfer of property u/s.69A of the Act. Since, we have dismissed appeal filed by the Revenue and uphold the findings of the Ld.CIT(A) in directing the AO to delete the addition made u/s.69A of the Act, in our considered view, Cross-Objection filed by the assessee becomes infructuous, and thus, the Cross-Objection filed by the assessee is dismissed as infructuous.

20. In the result, appeal filed by the Revenue in ITA No.631/Chny/2023 is dismissed and Cross-Objection filed by the assessee in CO No.29/Chny/2023 is also dismissed.

Order pronounced on the 19th day of January, 2024, in Chennai.

00Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

Sd/-
(मंजूनाथा. जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

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चेन्नई/Chennai,
दिनांक/Dated: 19th January, 2024.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|--------------------------|------------------------|-----------------|
| 1. अपीलार्थी/Appellant | 3. आयकरआयुक्त/CIT | 5. गार्डफाईल/GF |
| 2. प्रत्यर्थी/Respondent | 4. विभागीयप्रतिनिधि/DR | |