

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

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

ITA Nos.636 to 638/Bang/2023
Assessment Years: 2016-17 to 2018-19

Mr. Abdul Khader Kodi Darul Huda, Near Salafi Masjid Kunjathur Via Manjeshwar Kasargod 671 323 Karnataka  <b>PAN NO : ALHPK5340F</b>	<b>Vs.</b>	DCIT Central Circle-2 Mangaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Ravishankar S.V., A.R.
<b>Respondent by</b>	:	Shri G. Manoj Kumar, D.R.

<b>Date of Hearing</b>	:	01.02.2024
<b>Date of Pronouncement</b>	:	22.03.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These appeals by assessee are directed by different orders of NFAC for the assessment years 2016-17 to 2018-19 having common date dated 23.5.2022.

**2.** The grounds raised by the assessee in all these appeals are common in nature, except change in figures. We consider grounds in ITA No.636/Bang/2023, which reads as follows:

- 1. The learned CIT(A)-2, Panaji erred in passing the Order in the manner he did.*
- 2. The ld. CIT(A)-2, Panaji erred in upholding the additions made by the Assessing Officer amounting to Rs.6,25,000 as undisclosed business income and Rs.1,99,40,000 as unexplained investments under section 68 of the Income Tax Act, 1961, which was purely on assumptions and presumptions based on the loose sheet found at the time of search.*

3. *The learned CIT(A)-2, Panaji has ought to have appreciated the fact that, an addition cannot be made on the basis of suspicion and guesswork and without bringing corroborative material on record.*
4. *The learned CIT(A)-2, Panaji, has failed to comprehend that, additions made based on a piece of paper found during the course of search wherein certain figures written, it will not amounts to undisclosed income or unexplained investments, without offering any cogent reason for the same.*
5. *The learned CIT(A)-2, Panaji has failed to comprehend the fact that, total sales or investments could not be regarded as profit of assessee and net profit rate had to be adopted on those sales or investments while making addition, as held in the following decisions, which are squarely applicable to the appellant's case.*
  - 1) *CIT Vs. Balchand Ajit Kumar, 135 Taxman 180 (Madhya Pradesh)*
  - 2) *CIT V. President Industries 124 Taxman 654 (Gujarat)*
  - 3) *CIT V. SM Omer, 62 Taxman 46 (Calcutta)*
  - 4) *V.R. Textiles v. JCIT 20 taxmann.com 154 (Ahmedabad)*
6. *The learned CIT(A)-2, Panaji has failed to appreciate that, the evidences unearthed were loose sheets and digital evidences, which has got no evidentiary value and legally inadmissible under section 34 of the Indian Evidence Act, as held in the following decisions.*
  - 1) *Common Cause (A Registered Society) Vs. Union of India (2017) (77 Taxmann.com 245) (SC)*
  - 2) *Principal CIT, Central III Vs. Krutika Land (P) Ltd. 103 taxmann.com 9 (SC)*
  - 3) *CIT Vs. P.V. Kalyansundaram (164 Taxman 78) (SC)*
  - 4) *CIT, Mumbai Vs. Lavanya Land Private Limited (2017) 83 taxmann.com 161 (Bombay)*
  - 5) *CIT, Bangalore Vs. IBC Knowledge Park (P) Ltd. (2016) 69 taxmann.com 108 (Karnataka)*
8. *The learned CIT(A)-2 Panaji has erred in relying on various case laws, which are not at all applicable to the appellant's case.*
9. *The appellant craves leave to add, amend or alter any of the foregoing grounds.*
10. *For these and any other grounds that may be urged before the Hon'ble ITAT, it is prayed that the Hon'ble ITAT may allow the appeal with costs.*

**3.** Facts of the case are that for the year under consideration, the assessee had filed his return of income on 14.4.2016 declaring a total income of Rs.43,86,150/-. A search and seizure action u/s132 of the Act was carried out in the case of assessee. Subsequent to the notice u/s 153A of the Act, the assessee filed return of income on 16.8.2019 declaring total income of Rs.43,86,150/-. The Assessing Officer completed the assessment u/s 153A r.w.s. 144 of the Act determining total income at Rs.2,49,51,145/-.

**4.** It is to be noted that in these assessment years the ld. AO has made following additions:

	Income from Business	Addition u/s 68 of the Act	Unexplained investment u/s 69 of the Act	Unexplained investment u/s 69B of the Act
2016-17	6,25,000/-	1,99,400/-	--	1,99,40,000/-
2017-18	5,65,000/-	3,58,89,000/-	--	--
2018-19	2,90,000/-	34,36,000/-	64,84,900/-	--

**Note: The AO wrongly mentioned the sections in final computation of Income in assessment order.**

**4.1** It is to be noted that while mentioning the addition made u/s 68 of the Act in certain assessment years, he made wrong mentioning of the section in the final computation as 69B instead of mentioning of correct provisions of the Act and the assessment order has been passed in all these assessment years under ex-parte u/s 144 of the Act. Against this assessee went in appeal before ld. CIT(A), who has confirmed all the additions made by ld. AO after giving opportunity to the assessee to file submissions before him. Against this, assessee is in appeal before us in all these assessment years.

**4.2** At the outset, it is observed that there were 392 days delay in filing the appeal before this Tribunal. The assessee has filed condonation petition for all these assessment years stating that in

all these appeals, ld. CIT(A) has passed the first appellate orders on 23.5.2022. The assessee inadvertently filed the appeals in these assessment years before Panaji Bench on 11.7.2022. Since all these appeals were wrongly filed before Panaji Bench, when it came to the knowledge of the assessee, he filed the appeals before this Bench on 29.8.2023, which was delayed by 392 days in filing the appeals before this Tribunal. The assessee has also supported its plea by filing a copy of Tribunal order in ITA Nos.55 to 57/Panaji/2022 dated 5.12.2023 and submitted that the assessee has filed the correct appeals before the Bangalore Bench before dismissal of the appeals by Panaji Bench on abundant caution. Further, it was submitted that since the assessee has already withdrawn its appeals before Panaji Bench on the impugned CIT(A)'s order, these appeals are to be admitted in the interest of justice and the assessee was bonafide that the jurisdiction of assessee as Panaji Bench and hence, there was a bonafide mistake committed by the assessee and requested to admit the appeal.

**5.** The ld. D.R. has put serious objection for the argument of ld. A.R. and submitted that the appeal is time barred which shall be dismissed in limine.

**6.** We have heard the rival submissions and perused the materials available on record. Admittedly, the assessee has originally filed the appeals against the impugned order of ld. CIT(A) before Panaji Bench on a wrong belief that assessee's jurisdiction was that of Panaji Bench of the Tribunal. In the meanwhile, the assessee came to know that the jurisdiction of assessee lies with the Tribunal Bangalore Bench. As soon as these facts came to the knowledge of the assessee, assessee filed the appeals before this Bench on 29.8.2023. These facts were brought to the knowledge of the Panaji Bench and the Panaji Bench of ITAT vide order dated 5.12.2023 has permitted the assessee to withdraw the appeals. In our opinion, the action of the assessee is bonafide and we find

reasonable causes in filing the appeals before this Tribunal belatedly. Accordingly, these appeals are admitted for adjudication.

**7.** On merit of the addition made by Id. AO sustained by Id. CIT(A), the Id. A.R. submitted that the AO has relied upon loose sheets, unsigned entries in note books to hold that the assessee has introduced unaccounted money and same to be taxed under the provisions of the Act as undisclosed income of the assessee. The loose sheets, scribbled note books cannot be treated as incriminating material unless they are corroborated with cogent evidences. The loose sheets, note pads, etc., relied upon by the assessing officer are not speaking ones. They are dumb documents. They cannot be relied upon to frame the assessment orders. The observation of AO would mean that the AO has acknowledged that the seized material as non-speaking documents. He relied on the decision of the Hon'ble Supreme Court in Common Cause (A Registered Society) v. UOI [2017] 394 ITR 220 (SC) for the proposition that unsigned loose slips cannot be acted upon so as to sustain addition. He further submitted that the Tribunal in the case of Atul Kumar Jain v. DCIT [1999] 64 TTJ (Delhi) 786 construed the meaning of the expression "document" in the context of section 132 of the Act as under:-

*"6.4 The Assessing Officer has made out the case for making such addition based exclusively on the said piece of paper found and seized during the course of search in the case of Mr. Deekshith. It is, therefore, to be examined whether the said paper found and seized is a document having evidentiary value to prove the fact of the transaction. The word "document" has been defined in section 32 of the Indian Evidence Act to mean any matter expressed or described upon any substance by means of letters figures, or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. The word "document" has also been similarly defined in the General Clauses Act. The meaning Of the word "describes N used in the definition as given in the New Shorter Oxford English Dictionary is "portray in words, recite the characteristics of, in a detailed or graphic account of". The meaning of the word "express" used in the definition as per the New Shorter English Dictionary is "A graphic representation as image; an act of expressing or representing by words, signs or actions, expressions, a mode of speech, of phrase; an utterance". According to the Hon'ble Supreme Court in the case of Ramji Dayawala & Sons (P.) Ltd. v. Invert Import AIR 1981 SC 2085, mere proof of the handwriting of a document would not*

*tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouch safe for the truth of the facts in issue. "*

**7.1** He submitted that the Tribunal in ACIT v. Layers Exports P. Ltd [2017] 153 ITR (Trib) 416 (Mumbai) held as under: -

*"33. In entirety of the matter, we are of the view that an addition in assessments carried out pursuant to search action u/s 132 of the Act has to be related to cogent and positive materials found during search which prove conclusively that the assessee has either earned an income or made an investment which has not been recorded in his regular books of account or that his case is covered under any of the deeming provisions contained in sections 68, 69, 69A to 69D of the Act. However, additions cannot be sustained merely on the basis of rough noting made on few loose sheets of Papers unless the AO brings on record some independent and corroborative materials to Prove irrefutably that the said noting reveal either unaccounted income or Unaccounted investment or unaccounted expenditure of the assessee. As discussed above, in the instant case, assessments for the impugned years have been completed u/s 7,53A of the Act which relates to assessment in case of search or requisition. The Prerequisite condition for application of Sec. 153A of the Act is a search conducted Under section 132 of the Act or any requisition made under section 132A of the Act to Unearth hidden income or property. Thus, the wry purpose/ essence of search Conducted u/s 132 of the Act is to unearth hidden income or property or get hold of books Of account or documents which has not been or will not be otherwise produced by the assessee in regular course on issue of summons or notice. In the assessee's case, as stated above, the purported search action did not lead to discovery of any unaccounted money, bullion, jewellery or other valuable article or thing. Further books of account revealing any undisclosed transactions of the a.33e33ee were Luu during the course of search. The entire assessment order revolves around scribbling in loose sheets of papers seized from premises of another person in course action on such other person. It is a fact that the said rough loose Sheets of papers scribbled by some anonymous person and seized in course of search of another person cannot be termed as 'documents' having any evidentiary value within the meaning of section 132 or section 132A of the Act. Thus, the entire assessment u/s 153A of the Act in case of the assessee rests on shaky and incorrect foundation and thus deserves to be quashed."*

*".....In light of the aforesaid judgment, we are of the view that the impugned loose sheets of papers cannot come within the ambit of definition of the word "document-to be used as evidence and the same cannot form the basis for assessing the undisclosed income of the assessee. Admittedly, the said loose papers are not in the form of pro-notes or duly executed documents or books of account or certificates or money receipt which can prove conclusively the factum of any undisclosed income earned by the assessee or any unaccounted investments or*

*made by him Additions be made simply on the basis of rough scribbling made by some unidentified .person on few loose sheets of papers. "*

**7.2** In view of the aforesaid, the Id. A.R. submitted that since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the AO wants to make use of it, the onus rests on the AO to collect cogent evidence to corroborate the noting therein. The AO has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted money payments of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted. Hence, an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged advance made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers found during the course of search by other person and having no evidentiary value, is unsustainable and bad-in-law.

Finally, he relied on the following judgements:-

- a) CIT v. Indeo Airways (P) Ltd. (2012) 349 ITR 85 (Delhi)
- b) Gem Super Structures Pvt. Ltd. V. DCIT, in ITA No.15/Bang/2014, dated 3.11.2016
- c) P. Narasimha Rao Shivaprasad v DCIT, in ITA No.840/Bang/2022, dated 26.5.2023

d) DCIT v. Sunil Kumar Sharma in WA 830 to 834/2022 dated 22.1.2024.

**7.3** Without prejudice to the above, the ld. A.R. submitted that provisions of section 292C of the Act is of no assistance to the revenue and no adverse presumption can be drawn on the basis of seized materials. Further, it was submitted that issue may be at best remitted to the file of ld. AO as he has not given any opportunity to the assessee to present his case and also ld. CIT(A) confirmed the order of ld. AO in a routine manner verbatim mentioning the findings of the ld. AO, which shall be vacated.

**8.** The ld. D.R. submitted that order of the ld. AO is ex-parte though the order of the ld. CIT(A) is not so. Thus, he submitted that issue may be remitted to the file of ld. AO for fresh consideration.

**9.** We have heard the rival submissions and perused the materials available on record. Under s. 153A, undisclosed income of the assessee for the year under consideration is required to be computed on the basis of evidence found during search action or requisition of books of account or documents and such other materials or information as are available with the AO, and relatable to such evidence. Unsigned documents or loose slips has no evidential value. The contention of ld. A.R. is that any corroborating evidence with any seized material were found. The AO has not verified as to who has written on the loose papers. The AO has not established the link of loose papers with any other seized material. The sworn statement recorded under s. 132(4) is some piece of evidence. The AO has to establish the link with other books of accounts seized. It cannot be considered as the conclusive evidence. The words "may be presumed" appear in s. 132(4A). Since the words "may be presumed" are incorporated in the section, it gives option to the authorities concerned to presume the things. But it is

rebuttable and it does not give definite authority and not a conclusive one. The assessee has every right to rebut the same by producing evidence in support of its claim. The entire case depends on the rule of evidence. The assessee has every right to shift the burden of proof. The Revenue authorities cannot automatically presume things. The actual things depend upon facts and circumstances of each case. Therefore, the authorities concerned should draw the conclusion judicially, depending upon the facts. The Revenue authorities have found loose documents showing certain entries which are considered as introduction of cash into assessee's business which are not accounted by the assessee. The AO himself is confused with regard to the section which is applicable i.e. whether section 68 or 69 or 69B of the Act. The AO is not firm as to whether the assessee has introduced money into his business or whether it is accounted in the books of accounts. Section 68 of the Act is only applicable when it is recorded in the books of accounts and not explained to the ld. AO to his satisfaction. Hence, the assessing officer shall be sure while invoking section 68 or 69 or 69B of the Act. There is severe inconsistency in determining the undisclosed income by ld. AO. This inconsistency has not stopped here. Further, the AO in the body of assessment order invoked the different provisions and at the end while computing the income, invoked different provisions which cannot be upheld. This method of computation of income is against the principle of law. While determining the undisclosed income in these assessment years, the ld. AO shall be specific in his statement. He cannot draw his inference on the basis of suspicion, conjectures or surmises. Suspicion, howsoever strong, cannot take place of material in support of findings of the AO. The AO should act in a judicial manner proceeded with judicial spirit and should come to a judicial conclusion. The AO is required to act fairly as a reasonable person and not arbitrarily or capriciously. An

assessment made on inadequate material cannot stand on its own leg.

**9.1** Further, the unsigned loose papers have no evidentiary value. The AO has not established nexus between the loose slips and the undisclosed income of the assessee. In certain slips, there is no date or signature in the loose slips. No narration or description are written on these slips. Since these are unsigned and undated, the contents therein are insufficient to fasten the liability on the assessee. The Circular No. F.No. 286/2/2003/IT(Inv.), dt. 10th March, 2003 clearly refrains the AO from recording confessional statement during the course of search and seizure and survey operations and also warns the AO not to attempt to obtain any confessional statement as to the undisclosed income, and any action contrary shall be viewed adversely. It also states that the AO should rely upon the evidence and material gathered during the course of search. Here, the evidence is only unsubstantiated loose papers, which alleged to be introduction of unaccounted cash into business of the assessee.

**9.2** Further, Hon'ble Supreme Court in the case of Common Cause (A registered Society) Vs. Union of India [2017] 394 ITR 220 (SC) in Writ Petition (Civil) No.505 of 2015 dated 2.7.2018 wherein considered and observed that the entries in the loose papers/sheets are not "books of accounts" and has no evidentiary value u/s 34 of the Indian Evidence Act. The Hon'ble Supreme Court dismissing the writ petition filed by Common Cause, a registered society, refused to give nod to investigate against the Sahara and Birla Groups in the alleged pay-off scandal. The factual setting of the case are that, a search was conducted by the CBI in the premises of Birla Groups, as a result of which, certain incriminating materials and an amount of Rs.25 crores were recovered. CBI referred the matter to Income Tax Department. In another search, the IT

department recovered certain incriminating materials and unaccounted money of Rs.135 crores from Sahara Group of Companies. Allegedly the department recovered certain print out of excel sheets showing that Rs.115 crores were paid to several public figures. The settlement commission granted immunity to the Sahara Group of Companies on ground that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives, etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disks and pen drives, etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. The Income Tax Settlement Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. The petitioner, Common Cause, impugned the orders before the Hon'ble Supreme Court. Dismissed the petition Supreme Court clarified that the evidence that had surfaced was not credible and cogent. The Attorney General contended that documents which have been filed by the Birla as well as Sahara group are not in the form of Account books maintained in the regular course of business. They are random sheets and loose papers and their correctness and authenticity even for the purpose of income mentioned therein have been found to be unreliable having no evidentiary value, by the concerned authorities of Income Tax. Analysing the veracity of the evidences procured from the companies, the Hon'ble Supreme Court, relied upon the ratio laid in V.C. Shukla case and observed that the entries in loose sheets of papers are not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible u/s 34 of Indian Evidence Act, and that only where the entries are in the Books of

Accounts regularly kept depending on the nature of the occupation, that those are admissible.

**9.3** In the present case, the additions made by the AO towards unaccounted introduction of cash is solely on the basis of incriminating material found during the course of search being 'scribbling pad'/loose slips further coupled with statement recorded during the course of search from the assessee. Except these documents, the AO has not brought on record any other evidence to support additions made towards unaccounted cash receipts as undisclosed income of the assessee. There is no dispute with regard to the fact that incriminating material was found during the course of search, but fact remains that whether the incriminating material found during the course of search being unsubstantiated loose papers is sufficient enough to draw an adverse inference against the assessee to conclude that the information contained in the said incriminating material relates to undisclosed income of the assessee. No doubt, assessee has confirmed authenticity and correctness of the registers and also the statements recorded from Rafih, Mr. Abdul Nasar as well as other employees in the sworn statement recorded. But subsequently the said assessee not offered the same as income of the assessee in the return of income filed on 16.8.2019 in response to the reminder issued on 12.3.2019 to comply with the terms of notice issued u/s 153A of the Act for these assessment years. No doubt, statements recorded under various provisions of the Income Tax Act are a vital tool in the hands of the Income Tax Authorities in their thrust to establish certain factual and legal positions. Further, admission is an extremely important piece of evidence and it is admissible against its makers, but the fact remains is that the statement recorded during the course of search or survey is important piece of evidence if it is supported by corroborative evidence. In case, the contents recorded in the statement is not supported by corroborative evidences, solely on the

basis of statement recorded during the course of search no adverse inference can be drawn against the assessee, more particularly when such statement has been honoured by the assessee or retracted by the assessee. It is to be noted that in every search statement u/s 132(4) of the Act invariably recorded on multiple times till search action is concluded. The person giving such statements during search proceedings remain under great mental pressure, nervousness and stress. Most of the time, they also do not have the availability of relevant details, documents, books of accounts at the time of giving such statements, in the absence of which precise information the statements made during the search proceedings are often vulnerable on the ground that the same cannot be correctly furnished. There may be cases, in the course of search and seizure operations wherein an attempt is often made to extract information about undisclosed income with the desire to announce the success of the operation of search by concerned authorities, for achieving their success in search operations. In such cases, income tax department may adopt the various tactics for confession of undisclosed income, which amounts to violation of principles of natural justice. To curb such action, the CBDT issued Circular F.No.286/2/2003-IT(Inv.) dated 10.3.2003 after taking due recommendation of Kelkar Committee, which clearly states that no attempt should be made to obtain confession/surrender as to the undisclosed income during search. Subsequently, CBDT issued another Circular F.No.286/98/2013-IT (Inv.II) dated 18.12.2014, for the same effect. It is often noted that in the statement recorded u/s 132(4) of the Act during the search, there is a mention that there was no pressure and the statement was given voluntarily without any threat. At this time, it is pertinent to draw the reference to the order of the Tribunal Mumbai Bench in the case of Deepchand & Company Vs. ACIT (ITA No.1231 to 1234 (Bom) of 1993 dated 27.7.1994 wherein observed as under:

*“The stereotyped mention at the end of the statement that whatever was stated was true and to the best of the knowledge and belief and the statement given was voluntary without any threat, force or undue influence, would not mean that they agreed for making additions. Putting certain expression at the end of the statement cannot be taken as true in view of the retraction. Retraction can be made only after understanding the correct meaning and consequence of the statement.”*

**9.4** In the present case, it was the case of the assessee that the statement was given under mental pressure and disturbed state of mind. It is a well settled principle of law that admission is an extremely important piece of evidence, but it cannot be said that is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account did not correctly disclose the correct state of facts. This principle is supported by the decision of the Hon'ble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala & Anr (1973) 91 ITR 18.

**9.5.** In this factual and legal background, if we examine the facts of present case, one has to see whether additions made by the AO towards unaccounted cash introduction as recorded in seized incriminating document being scribbling pad/loose paper is in fact the undisclosed income of the assessee or which is a non-speaking document having no evidentiary value. Admittedly, incriminating material found during the course of search in the possession of assessee does not bear the signature of the assessee. It is also an admitted fact that the said scribbling pad/loose papers having no signature and authentication. According to the AO, the assessee has systematically recorded cash receipts from various parties and it has been considered by Id. AO as income of assessee. The said finding has been arrived at on the basis of admission of the person who wrote the alleged scribbling pad or loose papers and which was further supported by the admission of assessee. However, fact

remains is that there is no corroborative materials to these entries in scribbling pads or loose papers. Therefore, it does not carry any evidentiary value. The assessee further stated that the alleged scribbling pad had neither any vouchers nor invoices to support the transactions mentioned therein nor any details as to the payee or the nature of expenditure or source is mentioned therein. We have gone through the statement recorded from the assessee and alleged incriminating documents found during the course of search. On perusal of the contents of the scribbling pad, we find that the said document has been written to record some cash receipts and to make some cash payments towards expenses. Similarly, the purported payment claims to have been made for expenses are also no reference to any particular expenditure or person to whom said amount has been paid. From the above, one thing is very clear that the alleged scribbling pad to be considered in whole both receipts and payments and only receipts or payments cannot be considered isolatedly. Although there are entries both receipts and payments in the scribbling pads, ld. AO has considered only receipts and not at all considered the payments, which is incorrect. Further, the ld. AO has not made any attempt to find out from whom the assessee has received these payments and also to whom the assessee has made the payments. Hence, it is not proper to sustain these additions based on the uncorroborated materials, which lacks evidentiary value.

**9.6** In the absence of any specific reference to the source of cash receipt and from whom cash has been received and also the nature of expenditure for which cash has been paid and the persons to whom said cash has been paid, it is very difficult to accept the contents of the scribbling pad as undisclosed income of the assessee outside the books of accounts. Moreover, it is highly incorrect to say that a person maintains parallel books of accounts to record unaccounted transactions would also include cash

withdrawn from regular bank accounts and record the same along with undisclosed books of accounts. From the above, it is abundantly clear that the impugned scribbling pad is part of the purported statement and declaration obtained by the Search Team to support the declaration taken towards undisclosed income for the period covered under search. It is a well settled principle of law that when non-speaking documents like the present scribbling pad are recovered during the course of search and the Revenue wants to make use of it, the onus is on the Revenue to collect cogent evidences to corroborate the noting in alleged incriminating documents. In this case, the Revenue has failed to bring on record any cogent evidences to prove conclusively that the noting in the seized papers refer the unaccounted cash receipts of the assessee. Further no circumstantial evidences in the form of unaccounted assets and liabilities outside the books of accounts were found in the course of search except cash of Rs.2,86,380/- and jewellery of Rs.21,98,520/-.

**9.7** Therefore from the above, it is very clear that the document found during the course of search was treated by the Department to support the confession taken towards undisclosed income and hence the same cannot be considered as incriminating material found as a result of search which can be used against the assessee. We are also of the considered view that the impugned additions made by the AO on the basis of incriminating material being scribbling pad/loose slip papers is an inadequate material or rather no material at all and as such deserves to be ignored. Further, it is a settled position of law that statement recorded U/s.132(4) of the Act is an important piece of evidence but reliability depends upon the facts of the case and particularly surrounding circumstances and in this case, the lower authorities reached to the conclusion on the basis of assumption resulting into fastening on the liability of the assessee on the basis of inadequate material coupled with

statement recorded during the course of search. No doubt, statement of oath recorded U/s.132(4) of the Act is a piece of evidence, when there is incriminating material supporting the said admission. In the absence of any corroborative evidence, merely on the basis of admission in statement recorded U/s.132(4) of the Act, no liability can be fastened on the assessee. The AO has not brought on record any material and reasons for rejection of assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why the AO did not proceed further to enquire into the unaccounted income as admitted by the assessee in the statement U/s.132(4) of the Act. This principle is supported by the decision of the Hon'ble Jharkand High Court in the case of M/s. Shree Ganesh Trading Co. vs. CIT, (2013) 257 CTR 0159. The Hon'ble Gujarat High Court in the case of Kailashben Manharlal Chokshi vs. CIT, 14 DTR 257 had considered an identical issue and held that statement recorded at odd hours cannot be considered to be voluntary statement, if it is subsequently retracted and necessary evidence is laid contrary to said admission and therefore admission on the basis of retracted statement U/s.132(4) of the Act was not called for. The Hon'ble Supreme Court in the case of CIT vs. P.V. Kalyanasundaram, 294 ITR 49 (SC) held that question as to what is the actual sale price of the property, the implication of the contradictory statements made by the seller and whether reliance could be placed on the loose sheets recovered in the course of search are all questions of fact and not substantial questions of law. The ITAT, Mumbai in the case of ACIT vs. Layer Exports Pvt. Ltd., [2017] 531 ITR (Trib) 0416 (Mumbai) had considered a similar issue in the light of loose papers found during the course of search and after considering relevant facts held that no addition could be made simply on the basis of uncorroborated noting in loose papers found during search because addition on account of alleged on-money receipts made simply on

the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, was unsustainable and bad in law.

**9.8.** In this case, on perusal of facts available on record, we are of the considered view that the additions made by the AO towards unaccounted cash introduction recorded in alleged scribbling pad is not based on any cogent evidence or supported by any unaccounted assets and investments unearthed during the course of search, but solely on the basis of assumptions and presumptions. This principle is supported by the decision of Hon'ble Supreme Court in the case of Umacharan Shaw & Bros vs. CIT (1959) 37 ITR 271(SC). Further, the assessee has brought on record various reasons to prove that the alleged scribbling pad is part of purported statement and declaration obtained by the search team during the course of search, but it is not a cash book maintained by the assessee to record unaccounted cash introduction. Had it been the case of the AO that the alleged scribbling pad and its contents was tested by cross examining the parties as stated by the AO in his assessment order, then obviously it would give raise to an occasion to the AO to rely on said documents to make additions. In this case, the AO has not made any effort to verify the entries recorded in the scribbling pad by making further enquiries and cross examining the alleged persons or suppliers named in the said incriminating document. Further, on perusal of incriminating documents found during the course of search, we find that nothing was emanating regarding name and address of persons from whom said amount was received and the nature of expenditure for which said amount was paid. In absence of any effort from the AO by way of further enquiries, merely on the basis of a dumb paper coupled with statement recorded during the course of search, additions made towards undisclosed income cannot be sustained, more particularly when said statement has no longer in operation.

**9.9** Further, we note that the presumption under section 292C is with reference to books of accounts, other documents, money, bullion, jewellery or another valuable article or thing. The loose sheets, scribbled note-pads do not qualify as books of accounts and other documents. That being the case the presumption contained in section 292C cannot be applied by the AO merely because the loose sheets, note-pads are seized from the premises of the assessee. Therefore, the burden is cast upon the AO to prove that the loose sheets or note pads belong to the assessee. There is nothing in the loose sheets, note pads to hold that they belong to the assessee. The loose sheets / note pads do not contain name of the assessee or seal of the assessee. Neither the authorized officer nor the assessing officer have discharged the burden cast upon them to prove that the loose sheets /note pads belong to the assessee. It is to be noted that the expression used in section 292C is "may be presumed". Therefore, it is a rebuttable presumption. The assessee has contended that the seized material does not belong to it. The entries contained therein are not made at the behest of the executive committee of the assessee.

**9.10** It is also noted that the said seized material does not qualify even as books of accounts or other documents. Therefore, the presumption under section 292C cannot be raised in respect of the seized material. That is presumably the reason why even the assessing officer has not averred that the presumption under section 292C can be invoked in respect of the seized material.

**9.11** Even assuming but without admitting that section 292C applies even with reference to loose sheets, note pads containing unsigned entries a perusal of section 292C would show that the presumption is only with regard to books of account, other documents, money, bullion, jewellery or other valuable article or

thing found during the course of search under section 132. Moreover, it is a search induced assessment. Section 132(4A) also contains similar presumption. Section, 132(4A) should be read harmoniously with reference to sub-section (1) of section 132. The books of account or other documents referred to in section 132(4A) are those referred to in section 132(1)(iii) read with section 132(1)(a) / (b). The assessee has established that the authorising officer could not have formed a reasonable belief that eventualities stated in section / (b) exist. Therefore, section 132(4A) cannot come into play. Consequently, section 292C does not apply.

**9.12** In our opinion, unless the burden of proving that the materials and cash belong to the assessee is discharged those materials can neither be seized under section 132 nor relied upon to make assessment under section 153C. Therefore, the seizure of such material is illegal. The AO cannot rely upon such material whose seizure is illegal and the hence, assessment is void ab initio.

**9.13** Further, it is observed that the AO is merely trying to justify his estimation of unaccounted income. The whole principle of an assessment which is preceded by search is that an officer specified in section 132(1) has reason to believe in consequence of information in his possession that any of the eventualities stated in section 132(1)(a) to (c) exist. So there are two stages: one stage, where the authorizing officer has information in his possession prior to the search and second stage, where the authorized officer finds during the course of search by exercising any of the powers stipulated in section 132(1)(i) to (v) for which he is authorized. Therefore, assessment under section 153A r.w.s. 132 is a unique kind of assessment where the focus is on assessing income on incriminating material and such material should be representative of concealed income. The AO cannot merely say that it is difficult to find directly incriminating evidence and hence, he wants to resort to estimation. Presence of incriminating material alone confers

jurisdiction to make assessment under section 153A. In the present case, the method of quantification of undisclosed income is not at all scientific. Therefore, the entire assessment should fall based on the concession of the assessee. This shows that the AO has not been able to ascertain the undisclosed income from the material and he should ascertain the undisclosed income from seized material only. The AO is making a lame attempt to justify the irrational manner in which he made the assessment. The very fact that the AO was left with no choice but to determine the unaccounted income would show that the non-speaking document is not corroborated. The AO has completely missed the fundamental concept pertaining to assessment by passing ex-parte assessment order.

**9.14** Further, ld. AO considered seized material A/AKK/1, A/AKK/2 to consider the unaccounted income from Royal projects for these three assessment years as follows:

<b><u>Assessment year</u></b>	<b><u>Amount</u></b>
2016-17	6,25,000/-
2017-18	5,65,000/-
2018-19	2,90,000/-

**9.15** The Assessing Officer considered the gross amount written in the loose slips without examining these entries in the assessee's books of accounts. The ld. CIT(A) confirmed the same. In our opinion, the total receipt cannot be considered as income of the assessee without reconciling with the entries in the regular books of accounts maintained by the assessee for these assessment years. Even if the entries found in the loose slips not found entered in the books of accounts of the assessee, it can only be net income be considered as business income of the assessee and not the entire receipt be considered as income of assessee. In view of this, we

direct the ld. AO to estimate the income of the assessee from these impugned receipts, if so warranted at the average rate of net profit of last immediate 5 assessment years as determined by the ld. AO in these assessment years.

**9.16** Further, we also make it clear that whatever income determined by the ld. AO to be considered as income under head “income from business” only as the receipts is emanated from the business only.

**9.17** Further, in assessment year 2018-19, ld. AO made addition towards house repair/renovation at Rs.40 lakhs, cash found during search at Rs.2,86,380/- and jewellery found at Rs.21,98,520/-. In our opinion, these things are also required examination at the end of ld. AO after giving opportunity of hearing to the assessee. It is to be noted that the ld. AO has to consider the drawings made by assessee in various assessment years to acquire jewellery and also he has to consider the number of family members including male and female and give due credit to their holdings in the light of CBDT Circular No.1916 of 1994, which suggests that 500 gms. Of jewellery for each married lady, 250 gms for each unmarried lady of the family and 100gms for each male member of the family to be given in view of customary practice of holding jewellery in India. Further, he should give due credit to the cash balance shown in the books of accounts as on the date of search towards cash found at the residence of the assessee or business premises if the assessee able to correlate between these two.

**9.18** The CIT(A) without appreciating the correct facts, he has simply confirmed additions made by the AO towards undisclosed income on the basis of scribbling pad found during search, which cannot be upheld. We, therefore for above reasons vacate the findings of the Ld. CIT(A) as well as assessment order and direct the

AO to pass assessment order after considering our observations as above in all these three assessment years. Accordingly, we remit all the issues in dispute to the file of ld. AO to pass assessment order in the light of above observations after giving an opportunity of physical hearing to the assessee.

**10.** In the result, all the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 22<sup>nd</sup> Mar, 2024

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 22<sup>nd</sup> Mar, 2024.  
VG/SPS

Copy to:

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

By order

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