आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri Mahavir Singh, Vice-President
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं /**ITA Nos.1523/Hyd/2019 & 393/Hyd/2021**
(निर्धारण वर्ष/Assessment Year: 2010-11 & 2011-12)

Shri Nama Seetaiah Hyderabad PAN:AAUPN8501F	Vs.	Dy. C. I. T. Central Circle 3(2) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं /**ITA No.454/Hyd/2021**
(निर्धारण वर्ष/Assessment Year: 2011-12)

Dy. C. I. T. Central Circle 2(1) Hyderabad	Vs.	Shri Nama Seetaiah Hyderabad PAN:AAUPN8501F
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	14/05/2024	
घोषणा की तारीख/Pronouncement:	03/06/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

These cross appeals filed by the assessee, as well as the Revenue are directed against, the separate but identical orders of the learned CIT (A) 12 Hyderabad even dated 22.08.2019

and pertains to A.Y 2010-11 and 2011-12.Since facts are identical and issues are common, for the sake of convenience, the appeals filed by the assessee and appeal filed by the Revenue were heard and are being disposed off by this consolidated order.

ITA No.1523/Hyd/2019 (Assessee)

2. The assessee has raised the following grounds:

"1. The Ld. CIT(A) erred both on facts and in law in dismissing the appeal.

2. The Ld. CIT(A) erred in dismissing the appeal without appreciating the facts of the case.

3(a). The Ld. CIT(A) ought to have appreciated that the seized material in Annexure A/NNR/RES/1 page nos.48 to 57 based on which the addition of Rs.2,50,00,000/- has been made has nothing to do with the appellant.

3(b). The Ld. CIT(A) ought to have appreciated that the impugned seized material does not belong to the appellant.
3(c). The Ld. CIT(A) ought to have appreciated that the impugned five promissory notes have no evidentiary value since they do not contain the signatures of witnesses.

3(d) The Ld. CIT(A) ought to have appreciated that the impugned seized material is nothing but a dumb material.

4. The Ld. CIT(A) erred in grossly ignoring the letter of M/s. MAA Highways, Hyderabad confirming the impugned transactions for Rs.2,50,00,000/- filed before the Assessing Officer during the course of scrutiny proceedings, a copy of which has also been filed on 02.06.2017 before her during the course of appellate proceedings through paper book vide page no.1.

5. The Ld. CIT(A) ought to have appreciated that the amount of Rs.2,50,00,000/- was never admitted by the appellant as his income either during the course of search proceedings or before the Assessing Officer during the scrutiny proceedings.

6. The Ld. CIT(A) erred in upholding the addition in the hands of the appellant de hors her observation in para no.8.2 of her order that when the statement of Sri N. Srinivasa Rao was confronted to the appellant during post-search investigations, the impugned amount was admitted through an affidavit. as undisclosed income in the hands of M/s. Madhucon Projects through an affidavit.

7. The Ld. CIT(A) ought to have appreciated that making the impugned party viz., Sri addition in the hands of the appellant based on the statement of a third N. Srinivasa Rao and without affording his cross examination to the appellant is not justified.

8. The Ld. CIT(A) ought to have appreciated that merely because the Managing Partner of M/s. MAA Highways has denied having lent the impugned money to Sri N. Srinivasa Rao during search proceedings and merely because Sri N. Srinivasa Rao has stated, during search proceedings, that the impugned money has been received from the appellant, the addition of the impugned money in the hands of the appellant is not warranted.

9. The Ld. CIT(A) ought to have appreciated that the surrender or otherwise of the impugned amount as undisclosed income in the hands of M/s. Madhucon Projects has nothing to do with the appellant and that the question of reconciliation or clarification does not arise at the appellant's end.

10. The Ld. CIT(A) erred in confirming the addition by observing that the appellant has not been able to explain the source of the amount of Rs.2,50,00,000/- during the assessment proceedings as well as the remand proceedings.

11. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the Grounds of Appeal at any time before or at the time of hearing of the appeal."

3. Facts of the case, in brief, are that the assessee is an individual has filed its return of income for the A.Y 2010-11 on

17/12/2011. A search and seizure operation u/s 132 of the I.T. Act, 1961 was carried out in the premises of M/s. Madhucon Projects Ltd and its group of cases on 4.2.2011 and as a part of the search operation, the residential premises of the assessee was also covered u/s 132 of the I.T. Act, 1961. Consequent to the search, notice u/s 153A of the I.T. Act, 1961 was issued on 31.03.2012. The assessee in response to the notice, filed the return of income on 23.10.2012 declaring a total income of Rs.27,41,630/-. The case was selected for scrutiny and during the course of assessement proceedings, the Assessing Officer noticed that during the course of search in the residence of Shri Nama Seetaiah, 5 Promissory Notes each for Rs.50 lakhs executed in March, 2010 by Sri N Srinivasa Rao, with 5 undated cheques of Rs.50 lakhs each signed by him were seized as per Annexure A/NNR/RES/1, page Nos. 48 to 57. During the course of search, statement was recorded from Shri N Srinivasa Rao and confronted those promissory note and cheques for which, he has stated that he has received Rs.2,50,00,000/- from Shri Nama Seetaiah. During the course of post search investigation, a show cause letter dated 8.6.2011 was issued asking Shri Nama Seetaiah to explain the source of the amount mentioned in the promissory notes aggregating to Rs.2.50 crores. In response, the assessee vide letter dated 19.7.2011, filed reply to the show cause notice and argued that the said promissory notes and undated cheques were executed by Shri N Srinivasa Rao, in fvour of MAA Highways, a sub-contractor of Madhucon Projects Ltd and nothing to do with

the assessee. The Assessing Officer further noted that during the post search investigation, the amount referred to in promissory notes and undated cheques was formed part of the undisclosed income admitted in the hands of Madhucon Projects Ltd. However, while filing the return of income, the same was not admitted as additional income by Madhucon Projects Ltd. Therefore, the Assessing Officer after taking note of the relevant facts has made addition of Rs.2.50 crores as undisclosed income of the assessee for the A.Y 2010-11.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). The assessee submitted that the seized promissory notes and undated cheques were executed in favour of M/s. MAA Highways, a subsidiary of Madhucon Projects Ltd. Further M/s. MAA highways has filed a confirmation with respect to those promissory notes and undated cheques and claimed that the said amount was given to Shri N Srinivasa Rao and the same was accounted in the books of account of M/s. MAA Highways. Therefore, the Assessing Officer is erred in making addition in the hands of the assessee. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of certain judicial precedents, observed that Shri N Srinivasa Rao admitted during the course of search that he has received the amount from Shri Nama Seetahah, the assessee. Although the promissory notes and cheques were drawn in favour of MAA Highways, but facts remain

that in the statement recorded u/s 132(4) of the Act, Shri N. Srinivasa Rao, has clearly admitted to have received amount from the assessee. Therefore, the subsequent claim that the amount was paid by M/s. MAA Highways to Shri N Srinivasa Rao and the same was accounted in the books of account of the MAA Highways is an after thought to circumvent the additions made by the Assessing Officer, therefore, rejected the explanation of the assessee and sustained the addition made towards undisclosed income.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) erred in not appreciating the fact that the seized material in Annexure A/NNR/RES/1 pages 48 to 57 on the basis of which addition of Rs.2.50 crores has been made in the hands of the assessee is nothing to do with the appellant. Further, the Assessing Officer himself has admitted in his assessment order that the promissory notes and undated cheques were executed in favour of MAA Highways a sub-contractor of Madhucon Projects Ltd. The Assessing Officer has made the addition merely on the basis of admission of 3rd party without allowing the assessee to cross examine the person who gave the statement against the assessee. Therefore, he submitted that the learned CIT (A) erred in confirming the addition made by the Assessing Officer on the

basis of 3rd party statement, even though the documents seized during the course of search does not belongs to the assessee and the assessee has not admitted to have lend the money to Shri N Srinivasa Rao,

7. The learned DR, on the other hand, supporting the order of the learned CIT (A) submitted that during the course of search when the evidences were confronted to Shri N Srinivasa Rao, he had admitted to have received the money from the assessee. Subsequent confirmation from MAA Highways is only an after thought to circumvent the addition made by the Assessing Officer, because during the course of search, the Managing Partner of MAA Highways has denied lending money to Shri N Srinivasa Rao. The Assessing Officer and the learned CIT (A) on the basis of evidences filed during the course of search coupled with the statement recorded from Shri N Srinivasa Rao has rightly made addition in the hands of the assessee and therefore, the order of the learned CIT (A) should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the 5 promissory notes each for Rs.50 lakhs executed in March, 2010 by Shri N Srinivasa Rao along with 5 undated cheques of Rs.50 lakhs each is signed by Shri N Srinivasa Rao were seized in the residential premises of Shri N Nageswara Rao, a 3rd party.

Although Shri N Srinivasa Rao in his sworn statement has stated that he has received sum of Rs.2.50 crores from Shri Nama Seetaiah, but the evidences found during the course of search does not show any link between the promissory notes and undated cheques to the assessee. As admitted by the Assessing Officer in his order at Para 4.1, the promissory notes and cheques were executed in favour of MAA Highways, a sub-contractor of Madhucon Projects Ltd. Although the Managing Partner of MAA Highways has denied any link with those promissory notes and cheques and also lending money to Shri N Srinivasa Rao during the search operation, but subsequently M/s. MAA Highways has filed confirmation letter and admitted that said documents belongs to them and also, they have lent money to Shri N Srinivasa Rao and further, the transactions were part of regular books of account maintained by the firm. Therefore, from the evidences, it is clearly established that the seized document in the course of search is nothing to do with the assessee and thus, in our considered opinion, the Assessing Officer is erred in making addition on the basis of said promissory notes and cheques as undisclosed income of the assessee. Further, when the documents clearly indicates some 3rd party name and further the said party has admitted and owned up the transaction, then in our considered opinion, the Assessing Officer and the learned CIT (A) are clearly erred in making addition on the basis of the said documents in the hands of the assessee only on the basis of statement of 3rd party. Further, the documents were found in the

possession of 3rd party but not in the premises of the assessee. Once the documents were found in 3rd party possession, the provisions of section 132(4A) does not attract, because the presumption as contained in sub section (4) is only on the person from whose possession the said document were found and seized. Further, when the documents were found in 3rd party possession and addition is made solely on the basis of 3rd party, in our considered opinion, the Assessing Officer ought to have confronted those documents to the assessee for his rebuttal and also provide an opportunity to the assessee to cross examine the person from whose possession the said documents were found and also on the basis of statement of 3rd person the addition was made. In the present case, the Assessing Officer without confronting those documents to the assessee and also without providing an opportunity of cross examination of the assessee has made the addition only on the basis of statement of 3rd party which is in our considered opinion is not correct. Except the statement from 3rd party, the Assessing Officer does not have any evidences to allege that the assessee has lent money to Shri N Srinivasa Rao. It is a well-established principle from the decision of various Courts that on the basis of statement of 3rd party, no addition can be made unless the statement is confronted to the assessee and also an opportunity of cross examination was provided for them. The CBDT Circular No.286/2013 dated 18.12.2014 clearly direct the Assessing Officer to gather evidences in support of the addition rather than relying solely on the

statement recorded during the course of search/survey. Therefore, we are of the considered view that the Assessing Officer has erred in making addition on the basis of documents found in the possession of 3rd party, even though the said documents does not belong to the assessee.

9. The assessee has relied upon certain judicial precedents in support of his argument. The assessee has relied upon the decision of the Pune Bench in the case of Rama Traders reported in 25 ITD 599. Under identical set of facts, the Tribunal has held as under:

> *"Section 132(4A) of the Income-tax Act, 1961 -Search and seizure - ITO found certain entries relating to purchases made by assessee in books of another firm R - assessee denied transaction beyond that accounted for in its own books - ITO, however, made additions to assessee's income by drawing presumption against assessee under section 132(4A) Whether presumption under section 132(4a) could be raised against assessee who was a third party and additions made to assessee's income accordingly - Held, no [matter remanded back to ITO for deciding issue on merits after giving opportunity to assessee and verifying from concerned firm"*

10. The assessee had also relied upon the decision of the Pune Bench in the case of Pradeep Amrutlal Runwal reported in 21 Taxmann.com 254 wherein it was held as under:

> *"6. Similar view has been taken by ITAT, Pune in Amit D Irshid [ITA No.988/PNA1] that presumption u/s 134(4A) is available only against the person from whose possession the document is found and not against the third person. In the absence of clinching evidence against the third person as stated above, no action could be taken against him. In such a situation, the Assessing Officer was not justified to*

> *make addition in question in assessee's case. In view of ab0ve, we are of the view that the addition made by the Assessing Officer is not justified and the same is directed to be deleted. It is pertinent to mention here that this case is being decided in its facts and circumstances; it cannot be applied to other cases as such".*

11. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the addition made by the Assessing Officer is solely on the basis of statement recorded from 3rd party without there being any corroborative evidences to suggest that the documents found during the course of search belong to the assessee and the said documents shows undisclosed income of the assessee assessable for the impugned A.Ys. The Assessing Officer and the learned CIT (A) without appreciating the relevant facts has simply made addition on the basis of documents found during the course of search which was not in the name of the assessee. Thus, we set aside the order passed by the learned CIT (A) and direct the Assessing Officer to delete the addition made towards undisclosed income on the basis of seized promissory notes and undated cheques.

ITA No.393 and 454/Hyd/2021 (A.Y 2011-12):

12. The assessee has raised the following grounds in ITA No.393/Hyd/2021 for the A.Y 2011-12:

> *"1. The Ld.CIT(A) erred in partly allowing the appeal.*
>
> *2. The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO has erred in making the addition to the income of the assessee while passing the assessment order u/s.143(3) of the Act without there being any incriminating material found during the search.*

3a. The Ld.CIT(A) erred in not allowing the additional grounds bearing nos. 22&23 taken with regard to the issuance of the notice u/s.143(2) of the Act.

b. The Ld.CIT(A) ought to have admitted the additional grounds nos.22&23 and ought to have quashed the assessment as invalid.

4a. The Ld.CIT(A) ought to have appreciated that the appellant has filed his return of income for the AY under consideration, on 25.03.2013 and that the notice issued by the Ld. assessing officer u/s.143(2) of the Act dated 15.01.2013 has no legal value.

b. The Ld.CIT(A) ought to have appreciated that it is an admitted fact that no notice u/s.143(2) of the Act has been issued and served on the assessee before completion of the assessment made u/s.143(3) of the Act and that the Assessment made u/s.143(3) of the Act would become invalid, abinitio.

c. The Ld.CIT(A) ought to have appreciated that the section referred to in section 143(2) is section 139 and not section 139(1) as observed by him vide para no.6.4 of his order.

d. The Ld.CIT(A) ought to have appreciated that a notice u/s.143(2) of the Act can be issued in a case falling u/s.139(4) of the Act and that the appellant has furnished his ROI on 25.03.2013 i.e., before the date of completion of the assessment.

e. The Ld.CIT(A) has erred in holding that there is no requirement of issuing notice u/s. 143(2) of the Act by the assessing officer.

f. The Ld.CIT(A) erred in while holding that there is no requirement of issuing notice u/s. 143(2) of the Act by the AO and has erred in relying on the receipt of ITR-V by the CPC on 12.04.2013 which has nothing to do with the fact of filing of return of income by the appellant on 25.03.2013.

g. The Ld.CIT(A) ought to have appreciated that the impugned assessment order passed u/s.143(3) of the Act dated 27.03.2013 is invalid, ab initio since no notice u/s.

143(2) of the Act has been after filing return of income on 25.03.2013 and thus the issue of notice u/s 142(2) on 15.01.2013 cannot be considered as valid notice and accordingly, the assessment is invalid and void ab initio.

5. Without prejudice to other grounds, the Ld.CIT(A) ought to have appreciated that in the absence of a valid return filed by the appellant as opined by him, the impugned assessment is required to be completed u/s.144 of the Act and not u/s.143(3) of the Act.

6. The Ld.CIT(A), grossly erred in appreciating he fact that the Ld. Assessing officer has not treated the return of income filed on 25.03.2011 as non-est because he has actually adopted the admitted income of Rs.59,80,720/- in the computation of total income of Rs.8,21,77,680/- in the order u/s. 143(3) of the Act dt. 27.03.2013 and the computation of total income of Rs.6,38,35,580/- in the order u/s. 154 of the Act dt. 29.10.2013.

7. The Ld.CIT(A) ought to have appreciated the fact that the Ld.AO has erred by adding an amount of Rs.2,51,40,217/-to the total income of the assessee.

a. Without prejudice to other grounds, the Ld.CIT(A) ought to have deleted As Rs the addition of Rs.2,51,40,217/-out of the total addition towards the investment in purchase of flat by the appellant.

b. Without prejudice to other grounds, the Ld.CIT(A) ought to have appreciated that the entire addition made towards investment in purchase of flat in sewa corporate towers is on surmises and submissions.

8. The Ld.CIT(A) ought to have considered that no addition of Rs.2,51,40,217/ being the alleged payment of purchase consideration over and above the amounts mentioned in the regd. sale deed in respect of the purchase value of 1 plots baring No.308 in sewa corporate towers, near IFFVO Chowk, in Gurgaon from M/s. Jain Estates etC., since no evidence value, whatsoever nor made any enquiries with the sellers about the receipt of amounts over and above the amounts as mentioned in the documents which, thus, is against to the principle of Natural Justice.

9. On the facts and in the circumstances of the case, the Ld. CIT (A) ought to have appreciated the fact that the sale deed is the final document and amount of consideration provided in registered document is the final amount of consideration and no extra amount was paid over and above the registered consideration in cash and that the documents found in search operations are unreliable to be able bring to tax.

10. On the facts and in the circumstances of the case, Ld. CIT (A) ought to have deleted the addition on the fact that there was neither cross verification nor any statement was recorded from seller on the alleged fact that the monies were paid to the seller.

11. On the facts and in the circumstances of the case, Ld. CIT (A) has erred by not appreciating the legal position that the primary burden of proof showing that the Assessee has invested more than the value of consideration declared in the registered sale deed will lie on Revenue only and not on the assessee to prove that there is no additional cash paid over and above recorded consideration.

12. The appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the Gern time of hearing of the appeal."

13. The Revenue in ITA No.454/Hyd/2021 for the A.Y 2011-12 raised the following grounds:

"1. The Ld.CIT(A) erred on facts and in law in allowing relief to the assessee.

2. The Ld.CIT(A) erred in deleting the addition of Rs.4,48,84,143/ towards purchase of flat in Delhi on the ground that the flat was registered in the name ne of Smt.Nama Chinnamma without appreciating the fact that undisclosed income of Rs.8,76, 10,360/ was admitted in the hands of the assessee for the A.Y.2011-12 towards purchase of flats in Delhi including the flat in the name of Nama Chinnamma.

3. The Ld.CIT(A) erred in deleting the addition of Rs.5,22,600/- towards unaccounted expenditure on purchase of jewellery without appreciating the fact that the assessee could not furnish any evidence to prove the availability of cash on the dates of purchase i.e. 22-12-2010 and31-01-2011.

4. The Ld.CIT(A) erred in deleting the addition of Rs.56,50,000/ without considering the fact that the explanation that the cash belongs to M/s. Madhucon Projects Ltd. was not supported by any evidence and further the assessee was in no way related to M/s.MAA Highways Private Limited from whose account the money was claimed to have been withdrawn.

5. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."

14. Facts of the case, in brief, are that the assessee is an individual and one of the Director of M/s. Madhucon Projects Ltd and its group concerns. A search & seizure operation u/s 132 of the I.T. Act, 1961 was carried out on the group cases of Madhucon Projects Ltd along with the residential premises of the assessee on 4.2.2011. Consequent to the search notice u/s 153A of the Act was issued on 31.3.2012. Thereafter, the case was taken up for scrutiny and notice u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued to the assessee. The assessee has filed his return of income for A.Y 2011-12 on 25.3.2013 declaring total income of Rs.59,80,720/-. The case was selected for scrutiny and during the course of assessement proceedings, the Assessing Officer noticed that during the course of survey operation u/s 133A of the Act conducted at the business premises of Madhucon Projects Ltd on 4.2.2011, certain papers/documents were found and the same were impounded vide Annexure A/NNR/RES/1.

From page Nos. 21 to 38 of the Annexure, it is observed that the assessee has purchased two fats bearing No.307 & 308 in Sewa Corporate Towers, near IFFCO Chowk in Gurgaon from M/s. Jain Estates for a consideration of Rs.4,25,10,360/- and Rs.4,51,00,000/- respectively. The Assessing Officer, further noted that as per the sale deed of Flat No.307, it is observed that the same is registered for an amount of Rs.1,75,86,000/-. During post search investigation, show cause notice dated 8.6.2011 was issued and asked the assessee to explain the source for purchase of the property. In his reply dated 19.07.2011, he has stated that, he has not paid any amount over and above what was stated in the registered document. The Assessing Officer further noted that investment in purchase of property at Gurgaon was forming part of declaration of addition income in the hands of Madhucon Projects Ltd. However, Madhucon Projects Ltd has not declared additional income offered during the course of search in the return of income filed for the relevant A.Y. The Assessing Officer further noted that during the course of search conducted on 4.2.2011 at the residential premises of the assessee, 2 purchase bills for purchase of jewellery from NAC Jewellers (P) Ltd, Chennai and purchase of Ballon Blue YG/Steel SM Watch was found and seized. The assessee was called upon to explain the documents and the source for purchase, for which the assessee replied that he has purchased silver article out of cash balance available with him. Similarly, during the course of search in the residential premises of the assessee at Delhi, an amount of Rs.56,50,000

cash was found out of which an amount of Rs.55,00,000/-seized. The assessee was asked to explain the same for which the assessee has stated that this amount belong to Madhucon Projects Ltd and it was given for the purpose of carrying to the site. The Assessing Officer, on the basis of evidences collected during the course of search and survey observed that the assessee could not explain the source for purchase of property and accordingly by taking note of relevant seized material and also the sale deed for the purpose of property, has made addition of Rs.7,61,96,960/- towards undisclosed investment on the purchase of property at Delhi, undisclosed income for purchase silver jewellery and cash found during the course of search.

15. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee has filed certain additional evidences, including copy of sale deed for purchase of property at Delhi and also details of source of cash found during the course including the relevant bank statement to prove that the cash drawn from bank account of MAA Highways P Ltd and Madhucon Projects Ltd. The learned CIT (A) forwarded the additional evidences to the Assessing Officer for his comments. In the remand report furnished on 5.9.2018 and 8.9.2018, the Assessing Officer has commented upon the additional evidences filed by the assessee and its admission. The learned CIT (A) after considering the relevant evidences filed by the assessee and also taken note of the

remand report of the Assessing Officer allowed partial relief in respect of addition made by the Assessing Officer towards unexplained investment in purchase of property and out of the total addition made by the Assessing Officer of Rs.7,00,24,360/-, he has sustained the addition to the tune of Rs.2,51,40,217/- and the balance amount of Rs.4,48,84,143/- is directed to be deleted.

16. Further, the learned CIT (A) had also deleted the additions made by the Assessing Officer towards unaccounted investment in jewellery of Rs.5,22,600/- on the ground that the assessee is having sufficient cash in hand to explain the unaccounted investment in purchase of jewellery and thus, the Assessing Officer cannot make additions when the assessee has explained the source for purchase of jewellery. The learned CIT (A) had also deleted the additions towards cash found during the course of search u/s 69 of the Act on the ground that the appellant has sufficient evidences to prove that the cash were withdrawn from Oriental Bank of Commerce maintained by Madhucon Projects Ltd and was handed over to the appellant being the M.D of the company. Since the appellant is M.D of the Company, cash withdrawn from companies account was kept with the appellant and the evidences filed by the assessee supports the argument of the assessee. Therefore, the Assessing Officer erred in making additions towards cash found during the course of search in the hands of the assessee and accordingly, directed the Assessing Officer to delete the addition.

17. Aggrieved by the order of the learned CIT (A), the assessee as well as the Revenue are in appeal before the Tribunal.

18. The first issue that came up for our consideration from Ground Nos 7 to 11 of the assessee's appeal and Ground No.2 of the Revenue appeal is towards the addition of unexplained investment for purchase of flats in Delhi.

19. The learned Counsel for the assessee submitted that the learned CIT (A) although allowed partial relief to the assessee in respect of the purchase of the property in the name of Mrs. N Chinnamma and also consideration paid by Madhucon Projects Ltd, but erred in sustaining the addition towards alleged cash payments for purchase of property in the name of the assessee on the basis of unsigned document found during the course of search which contain certain jottings including details of property and price agreed to be paid for purchase of the property etc. The learned Counsel for the assessee further referring to the paper book filed by the assessee submitted that the appellant has purchased a property from M/s. Jain Estates, New Delhi for a total consideration of Rs.1,99,59,783/- and the same was paid through bank account of Madhucon Projects Ltd. The appellant has not paid any extra consideration over and above what was stated in the registered sale deed. The Assessing Officer relied

upon the paper which contains name of building flat No, area of the flat, agreed rate per s.ft etc., and the said paper does not contain any signature of the appellant as well as seller. Further, on the other hand, the registered document clearly shows the consideration paid through proper banking channel and was on par with the guidelines value of the property as per the Stamp Valuation Authority. Further, there is no reference to any cash payment for purchase of property, even in the so-called documents found during the course of search. The Assessing Officer even made addition towards consideration paid for purchase of the property in the name of Mrs. N Chinnamma even though the said consideration was paid by Madhucon Projects Ltd and the property was registered in the name of Mrs. N. Chinnamma. The Assessing Officer without making any inquiry with the seller of the property has simply made addition on the basis of a paper which does not contain signature of both the parties. Therefore, he submitted that the addition cannot be made on the basis of dumb document which does not have any evidentiary value.

20. The learned DR, on the other hand, supporting the order of the Assessing Officer submitted that the document found during the course of search clearly shows purchase of two properties at New Delhi for a consideration stated in the document found during the course of search. The appellant could not establish the source for purchase of property and also not

disclosed necessary payments in the ITR. Although the appellant claims to have paid consideration and charges as per the sale deed, from the account of Madhucon Projects Ltd, no evidence has been filed. Further, the assessee had admitted undisclosed income for the A.Y 2011-12 towards purchase of property in Delhi including the flats in the name of Mrs. N. Chinnamma. The learned CIT (A) without appreciating the relevant facts has simply deleted the addition towards property registered in the name of Mrs. N. Chinnamma and also allowed relief towards consideration paid through cheque from the accounts of Madhucon Projects Ltd.

21. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant and Mrs. Nama Chinnamma had purchased 2 flats bearing 307 and 308 in Sewak Corporate Towers, near IFFCO Chowk, Gurgaon from M/s. Jain Estates. Further, Flat No.307 was registered in the name of the appellant and Flat 308 was purchased by Mrs. N Chinnamma. The consideration including the stamp duty charges as per the registered sale deed was paid through bank account of Madhucon Projects Ltd and the same has been accounted in the books of account of the company in the ledger accounts of the respective parties. In so far as the flat purchased in the name of the appellant, the Assessing Officer alleged that the assessee has purchased the flat for a consideration of Rs.4,51,00,000/-. The Assessing Officer arrived

at the above conclusion on the basis of document found during the course of search which contains details of 2 flats and price negotiated etc. We have gone through the document found during the course of search and found that the same was unsigned. Neither the appellant being a purchaser, nor the company being a seller was signed on the document. Further, there is no reference of any cash payment over and above the consideration specified in the registered document. Therefore, on the basis of a document which was unsigned, it cannot be assumed that the appellant has paid the price as stated in the said document, unless it was further corroborated with other evidences including confirmation from the seller. In the present case, the Assessing Officer has made addition simply on the basis of document without confronting the said document to the seller of the property and obtained their confirmation. In absence of any confirmation from the seller of the property on alleged exchange of consideration in cash over and above what was stated in the registered document, it cannot be said that the appellant has paid cash consideration for purchase of the property. Therefore, in our considered view, the Assessing Officer erred in making addition towards cash paid for alleged purchase of property on the basis of the said document.

22. Having said so, let us come back whether the learned CIT (A) is right in deleting the additions made towards consideration paid through bank from the books of account of

M/s. Madhucon Projects Ltd and also Flat No.307 registered in the name of Mrs. N. Chinnamma. Admittedly, consideration for purchase of property in the name of appellant and in the name of Mrs. N. Chinnamma was paid through bank account of Madhucon Projects Ltd in which the assessee is a director. The payments were recorded in the books of account of the assessee in respective ledger account of the parties. The Assessing Officer not disputed the fact that the consideration stated in the registered document including stamp duty and registration charges was paid through proper banking channel and further from the books of account of the Madhucon Projects Ltd. Once the consideration has been paid through proper banking channel and also the same forms part of books of account of the company, then the said payment cannot be considered as unaccounted payment and falls under the category of undisclosed income. Therefore, in our considered opinion, learned CIT (A) has rightly delete the addition made towards the consideration paid through proper banking channel from the books of account of the Madhucon Projects Ltd in respect of both the Flats.

23. As regards Flat No 307 registered in the name of Mrs. N. Chinnamma, we find that there is no dispute with regard to the fact that the said flat was purchased by Mrs. N. Chinnamma being an independent assessee. The consideration stated in the registered document was paid from books of account of Madhucon Projects Ltd and the same was accounted in the books

of account of the company. Since the payment for purchase of property in the name of Mrs. N. Chinnamma is paid by the company and also accounted in the books of account, in our considered opinion, the same cannot be considered in the hands of the assessee. Further, the Flat was not registered in the name of the assessee. Once flat is owned by 3rd party who is an independent assessee, then consideration paid for purchase of the property if any needs to be explained by the said person but not the assessee. Therefore, in our considered opinion, the learned CIT (A) is right in deleting the addition made towards purchase of property in the name of Mrs. N. Chinnamma including the consideration alleged to be paid in cash on the basis of document found during the course of search. The argument of the learned DR that the appellant has admitted undisclosed income towards purchase of property during the search does not take away the right of the appellant and other party to rebate the claim with necessary evidence and prove that the initial admission during the course of search is incorrect. In the present case, evidences including the sale deed for purchase of 2 properties were clearly established the fact that the Flat No.307 was registered in the name of Mrs. N. Chinnamma and Flat No.308 was registered in the name of the appellant. Further, the consideration paid for purchase of property was also paid from the books of account of Madhucon Projects Ltd through banking channel. Therefore, in our view, the Assessing Officer is completely erred in making addition towards alleged payment as unexplained investment in

the property solely on the basis of the statement of the assessee, even though the assessee has retracted his statement with clear evidences. In this regard it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of CIT vs. K.P. Varghese reported in (1981) 7 Taxmann.com 13 (S.C) and also the decision of the Hon'ble Supreme Court in the case of CIT vs. Kalyana Sundaram (Supra). Therefore, we are of the considered view, that the Assessing Officer is erred in making the addition towards the alleged unaccounted investment in property in the case of the assessee.

24. To sum up, considering the facts and circumstances of the case, we are of the considered view that the learned CIT (A) rightly deleted the addition made by the Assessing Officer towards consideration paid for purchase of property, through proper banking channel from the books of account of the Madhucon Projects Ltd in the hands of the assessee. We further are of the opinion that the learned CIT (A) is also erred in sustaining the addition of Rs.2,51,40,270/- in the hands of the assessee towards unaccounted investment in purchase of property in respect of alleged cash payment on the basis of a dumb document which was found and seized during the course of search. Therefore, we are inclined to uphold the decision of the learned CIT (A) for deleting the addition towards the consideration paid for purchase of property as per registered sale deed and also property registered in the name of Mrs. N. Chinnamma. We further direct

the Assessing Officer to delete the addition sustained by the learned CIT (A) to the tune of Rs.2,51,40,270/- in the hands of the assessee towards the alleged investment made in purchase of property and consideration paid in cash.

25. The next issue that came up for our consideration from Ground No.3 of the Revenue appeal is deletion of Rs.5,22,600/- towards unaccounted expenditure on purchase of jewellery. During the course of search, evidences were gathered which shows purchase of silver jewellery worth Rs.5,22,600/-. The Assessing Officer has made addition towards unaccounted investment in jewellery on the ground that the assessee could not satisfactorily explain the source for purchase of property. It was the argument of the assessee before the lower authorities that he had sufficient source of income including cash in hand for purchase of jewellery and thus, the same cannot be treated as unexplained investment.

26. We have heard both parties and considered the relevant reasons given by the learned CIT (A) to delete the addition towards unaccounted investment in purchase of jewellery. The learned CIT (A) has recorded a categorical finding that the appellant was having opening cash balance of Rs.10,45,163/- as on 31.03.2011 and out of the cash in hand available with the assessee, he had purchased jewellery. Further the learned CIT (A) recorded a categorical finding that the appellant has received sum

of Rs.55,80,500 as salary income from Madhucon Projects Ltd and also agricultural income of Rs.66,12,720/-. Further, the appellant is also deriving interest and dividend to the tune of Rs.17.00 lakhs. Therefore, the learned CIT (A) was of the opinion that the assessee is having sufficient source of income to explain the purchase of jewellery. We find that the revenue has failed to controvert the factual finding recorded by the learned CIT (A)towards availability of source of income for purchase of jewellery. Therefore, in our considered opinion, the Assessing Officer is erred in making the addition towards unaccounted jewellery only on the basis of evidences gathered during the course of search, even though the assessee has filed proof to explain the source for acquisition of said jewellery. Thus, we are of inclined to uphold the finding of the learned CIT (A) and reject the ground taken by the revenue.

27. The next issue that came up for our consideration from Ground No.4 is regarding deletion of Rs.56,50,000/- towards cash found during the course of search. The assessee explained that the cash belong to the M/s. Madhucon Projects Ltd and it was given for the purpose of site expenses. Contrary to what the assessee has stated Shri K.C. Chandra Mohan, employee working at Delhi Office of Madhucon Projects Ltd in his sworn statement stated, that he has withdrawn an amount of Rs.56,50,000/- from the bank account of Madhucon Projects Ltd and MAA Highways at Oriental Bank of Commerce, new Delhi and handed over the same

to the assessee. Since the assessee's explanation and employee's explanations were contradictory, the Assessing Officer has made addition towards cash found as unexplained income of the assessee.

28. The learned DR, submitted that the learned CIT (A) erred in considering the explanation of the assessee as cash belongs to Madhucon Projects Ltd without appreciating the statement given by the employee of the appellant during the course of search where he has clearly stated that the cash has been withdrawn from bank account of MAA Highways Ltd at New Delhi Office.

29. The learned Counsel, on the other hand, supporting the orders of the learned CIT (A) submitted that the assessee has filed details of cash withdrawn from bank account of Madhucon Projects Ltd and also meant for certain business expenditure. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer and the order of the learned CIT (A) should be upheld.

30. We have heard both the parties and perused relevant orders of the authorities below. The Assessing Officer has not disputed the fact that the cash was withdrawn from Oriental Bank of Commerce by Shri K.C. Chandra Mohan, an employee of Madhucon Projects Ltd and was also handed over to the assessee

being M.D of the said company. The appellant has also filed necessary bank statement and books of account to prove that the cash withdrawn was accounted and also debited into the account of the assessee. The assessee was right from the beginning stated that the cash found during the course of search belong to the company. Since the evidences filed by the assessee clearly shows that the cash found during the course of search does not belong the assessee and further it was the cash withdrawn from bank account of the company, in our considered opinion, when there are no contrary evidences, no addition can be made in the hands of the assessee as unexplained investment. The learned CIT (A) after considering the relevant facts has rightly deleted the addition towards the cash found during the course of search in the hands of the assessee. Thus, we uphold the order of the learned CIT (A) and reject the ground taken by the Revenue.

31. In the result, appeals filed by the assessee for the A.Ys 2010-11 and 2011-12 are allowed and appeal filed by the Revenue for the A.Y 2011-12 is dismissed.

Order pronounced in the Open Court on 3rd June, 2024.

Sd/-	Sd/-
(MAHAVIR SINGH) **VICE PRESIDENT**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 3rd June, 2024

Vinodan/sps

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5	Guard File

By Order