

ITA Nos.414&415/Bang/2024
Emirates Hindustan Builders and Developers, Kasargod
ITA Nos.167&168/Bang/2024
Tabesco Hindustan Infra Developers Pvt. Ltd., Kasargod
ITA Nos.174 & 175/Bang/2024
MKH Infrastructure, Kasargod

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.414 & 415/Bang/2024
Assessment Years: 2017-18 & 2018-19

Emirates Hindustan Builders and Developers IV/46 B3, Albasha Building City Centre, Uppala Kasargod Kerala 671 322 PAN NO : AAGFE1589G	Vs.	ACIT Central Circle-2 Mangalore
APPELLANT		RESPONDENT

ITA Nos.167 & 168/Bang/2024
Assessment Years: 2017-18 & 2018-19

Tabesco Hindustan Infra Developers Pvt. Ltd. No.D6 & D7, 2 nd Floor Mall of INDIA, Kanhangarh Kasargod Kerala 671315 PAN NO : AAFCT0390Q	Vs.	ACIT Central Circle-2 Mangalore
APPELLANT		RESPONDENT

ITA Nos.174 & 175/Bang/2024
Assessment Years: 2017-18 & 2018-19

MKH Infrastructure Pavoor Tower, Kunjathur, Manjeswara Post Kasargod Kerala 671323 PAN NO : ABAFM4882D	Vs.	DCIT Central Circle-2 Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Sri Guru Kumar S., D.R.

Date of Hearing	:	28.05.2024
Date of Pronouncement	:	08.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These appeals are emanated from different orders of CIT(A) for the assessment years 2017-18 & 2018-19 in case of above three assessees.

ITA Nos.414 & 415/Bang/2024 (AY 2017-18 & 2018-19)

Emirates Hindustan Builders and Developers:

2. First, we will take ITA Nos.414 & 415/Bang/2024, wherein certain issues are common except figures, hence these are clubbed together, heard together and disposed of by this common order for the sake of convenience. In this appeal the assessee has raised following grounds of appeal in ITA No.414/Bang/2024:

1. *“The ld. CIT(A) erred in passing the order in the manner he did.*
2. *The ld. CIT(A) further erred in confirming the addition u/s 68 of the Income Tax Act, 1961 without appreciating the submission of the appellant.*
3. *The ld. CIT(A) further erred in confirming the order of assessing officer by merely relying on sworn statement of the partner without any incriminating material having being found.*
4. *The ld. CIT(A) further erred in not appreciating that return in response to notice u/s 148 was filed only on 4.1.2019 and hence the assessment was time barred.*
5. *The ld. CIT(A) further erred in assessing the income u/s 68 of the Act.”*

2.1 At the time of hearing, the assessee has not pressed ground No.4. Thus, the only ground remained for our consideration is with regard to sustaining addition u/s 68 of the Income Tax Act, 1961 (in short "The Act") at **Rs.87.25 lakhs** on the basis of sworn statement recorded u/s 132(4) of the Act on 30.10.2017 without any corroborative materials.

3. Facts of the case are that the assessment order has been passed u/s 143(3) r.w.s. 153C of the Act. During the course of search proceedings at the residence of Mr. Mohammed Ibrahim, documents belonging to M/S Emirates Hindustan Builders & Developers have been seized. The seized documents included a Joint Development Agreement (JDA) dated 19.04.2017, as per which, one Mr. P B Ahammed and Mr. Thouseef PA as the first party, being the owner of the land measuring 1.55 Acres situated at Kasaragod Municipality, Kerala have entered into an agreement with the appellant (the second party) represented by Mr. Mohammed Ibrahim M and Mr. M B Yousuf being the Managing Partner / Partner, for developing the property and constructing a mall to be named as 'Pee Bee Central Mall' in Kasaragod, Kerala. It was mutually agreed upon that in consideration of the second party developing, promoting and constructing the building in the said property, the super built-up area shall be shared at the ratio 48:52. It is further seen from the above seized material that the amount totaling to Rs.2.50 Crore had been given by the appellant to Mr. P B Ahammed as refundable security deposit. Out of Rs.2.50 Cr given, Rs. 102.25 Lakh was given as cash and only the remaining amount was given as cheque / RTGS. It was also evident from the JDA that out of the total payment of Rs. 2.5 crores made on different dates, two payments, namely Rs.82,25,000/- on 3.10.2016 and

Rs.20,00,000/- on 19/4/2017 were made in cash, totaling to Rs. 102.25 Lakhs in cash and Rs. 147.75 Lakhs by other modes. Further, Mr. Mohammed Ibrahim, the Managing Partner of the appellant, made voluntary disclosure of Rs.102.25 Lakhs, on account of unexplained cash paid to the landowner, as the undisclosed income of the firm in his sworn statement u/s. 132(4) on 31/8/2017, and the same was confirmed in his statement u/s. 131 on 5/9/2017 and again u/s. 132(4) on 30/10/2017. During the course of assessment proceedings for A. Y. 2017-18, the AO issued several notices including notices u/s 153C on 22.08.2019, u/s 142(l) on 28.08.2019 and pre-assessment notice on 11.10.2019. Similarly, for A. Y. 2018-19, the AO issued several notices including notices u/s 148 on 09.07.2019, u/s 143(2) on 12.12.2019, u/s 142(1) on 28.08.2019 and pre-assessment notice on 11.10.2019. In response to the pre-assessment notices, the appellant submitted that the cash payments had been made by the partners of the firm and that the same had been duly accounted for. The AO issued notice on 18.11.2019 requiring the appellant to produce the partners, to furnish the date-wise cash flow statements of the concerned partners whom the appellant firm was now claiming that they had introduced cash, source particulars etc. It was also proposed to assess the cash payment of Rs. 102.25 lakh made by the appellant to Mr. P B Ahammed, as per the disclosure made by Mr. Mohammed Ibrahim in the sworn statements recorded on three different occasions, that too in a gap of about two months: While the appellant filed objections against the above proposal, however, it failed to produce the partners who had claimed to have made the cash investments. Further, the cash flow or books etc also had not been furnished. Only plain confirmation letters had been

furnished by the appellant firm in respect of some of the partners. The AO mentioned that despite specifically calling for, the appellant firm had failed to produce the partners who have claimed to have made cash payments. Further, other evidences— called for were also not furnished. Therefore, another notice dtd. 28/11/2019 was issued to the appellant to produce the partners who were stated to have admitted introducing cash for JDA payments individually and also to comply with the terms of the notices issued earlier. Two subsequent notices dated 03.12.2019 and 12.12.2019 were also issued providing a final opportunity to the appellant to produce evidences as called for. Meanwhile, as per the balance sheet furnished, it was noticed that various credits had been introduced in the accounts. The appellant was also required to prove the identity, genuineness and credit worthiness of loan creditors and other liabilities as per the balance sheet. However, the details and evidences were not furnished by the appellant until the date of passing of the assessment orders.

4. It was the case of ld. AO that evidences were found, during the course of the search action, that payments of Rs.1,02,25,000/- were made by the appellant in cash to land owners on account of security deposits as per the JDA signed between the appellant and the landowners. Mr. Mohammed Ibrahim, the Managing Partner of the appellant, and who is one of the signatories (on behalf of the appellant) to the JDA, stated in his sworn statement on 31.8.2017 u/s. 132(4) that Rs.2.5 were paid, out of which Rs.82,25,000/- and Rs.20,00,000/- was paid in cash. It was further admitted by Mr. Mohammed Ibrahim that Rs.82,25,000/- was paid on 3.10.2016 and Rs.20 Lakhs on 19/4,2017. To verify the veracity of the payment made with regard to the Joint Development, Mr. P.B.

Ahammed and Mr. Thouseef PA, S/o Mr. PB Ahammed was examined u/s. 131 by the investigating officer. Mr. P B Ahmed appeared and confirmed that he had entered into a JDA with M/S Emirates Hindustan Builders and Developers and confirmed the receipt of an of Rs.2.5 crores as a refundable security deposit from the developers. Further in his sworn statement, Mr. P B Ahammed stated that he had received Rs. 1,02,25,000/- in cash out of the total security deposit of Rs.2.5 crores. All the above facts have not been disputed by the appellant during this proceeding. Mr. Mohammed Ibrahim, the Managing Partner of the appellant further admitted that the entire amount of Rs.1,02,25,000/- paid in cash was the income in the hands of M/s. Emirates Hindustan Builders and Developers and offered the same for taxation. Further, a statement u/s. 131 was recorded on 5/9/2017 from Mr. Mohammed Ibrahim, in which he had reiterated the disclosure of Rs.1,02,25,000/- as the undisclosed income of the appellant. Thus, One Managing Partner of the firm, Mr. Mohammed Ibrahim, who had signed the JDA on behalf of the firm, had voluntarily admitted in the sworn statement recorded u/s 132(4), u/s. 131 and also u/s. 132(4) again three different occasions that the cash payment of Rs. 102.25 Lakhs was the undisclosed income of the assessee and disclosed the same.

5. On appeal, the Id. CIT(A) observed that the only argument of the appellant during this proceeding is that Rs. 1,02,25,000/- paid in cash was not the undisclosed income of the appellant and addition cannot be made u/s 68 of the Act. It was the submission of the appellant that the cash payment made to Mr. PB Ahammed had been duly accounted for by the appellant as the payments were received from the partners of the appellant firm. It was the case of

the appellant that by demonstrating the nature and source of the credit in the hands of the firm, the initial onus has been discharged and the burden shifts on to the department. Relying upon the Judgment of the Hon'ble Supreme Court in the case of CIT vs Lovely Exports (P) Ltd., 216 CTR 1 95, the appellant pleaded that the additions may be deleted.

5.1 It is the case of the AO that in spite of specially requiring to produce the partners who contributed cash, the appellant firm did not comply with it. Further, the cash flow statement or bank account statement of the concerned persons had not been furnished. The AO pointed out that in the absence of the cash flow statement, which was specifically called for, even examining the copy the income tax returns of the persons concerned would not serve any purpose as the Income-tax returns would not reveal or prove the source for cash investments. Most importantly, the appellant firm could not furnish even the confirmation statement from two of its partners namely Mr. Yousuf Subbayakatta (Rs.49,75,000/-) and Mr. Muttam Khalid (Rs.2,50,000/-). The AO held that it is for the assessee to furnish all supporting evidences especially in the background of the case that the Managing partner himself had admitted the cash payment totaling to Rs.102.25 Lakh as the undisclosed income in the sworn statements given voluntarily on three different occasions. More importantly, the amounts were claimed to have been given by the partners only and not by any outsider. Therefore, the burden was on the appellant firm to furnish the partners as required by the department. However, the burden was not discharged. Further, in respect to the claim of RTGS payment made by Mr. Muttam Khalid Abdul Khader (Rs. 16,00,000/-) the AO pointed out that the above RTGS was

neither made to the account of Mr. P B Ahammed, the land owner, nor to the account of the appellant firm nor to the account of Mr. Mohammed Ibrahim, the Managing Partner. The firm had already issued cheque payments out of the RTGS transactions made by the partner. Further, the bank account statements were also not furnished in spite of specific requirement. Therefore, it was held that the details furnished by the appellant did not in any way prove the genuineness or the source of even those particular RTGS transactions.

5.2 The above stands of both the parties have been considered. The search happened on 30.08.2017 and the Managing Partner of the appellant admitted to the undisclosed income in the hands of the appellant in three different occasions sworn statements between 31.08.2017 and 30.10.2017. Proceedings u/s 153C were initiated on 22.08.2019 and several notices had been issued by the AO for details. The first objection was filed by the appellant in response to notice dated 11.10.2019. The names and confirmation statements from some of the partners with regard to cash payments were furnished on 16.11.2019 and 28.11.2019. Neither the partners who contributed the above payments were produced before the AO nor any reasons for the failure to do so was accorded. On the perusal of the list of persons who alleged to have contributed to the cash payments, it is noticed that the cash payments were in the range of Rs.2,00,000/- to Rs.15,00,000/- except in the case of Mr. Yousuf Subbayakatta from whom no confirmation was filed. It is also interesting to note that Rs.3,00,000/- was shown to have been paid in cash by Mr. Mohammed Ibrahim, the Managing Partner, who had all along not disclosed this alleged fact.

5.3 If the appellant's claim was the gospel truth, it is incomprehensible as to why the appellant waited for more than 2 years to disclose this fact and that too at the far end of the assessment period. The delay can only be perceived as an attempt by the appellant to escape from the taxation of the admitted undisclosed investments in the hands of the appellant and to dodge the proceedings. It is also a fact that the appellant had not produced the persons who contributed to the cash payments before the AO for examination. It is not the case that the investors/contributors were some third parties on whom the appellant had no control or relationship. All the persons who allegedly contributed were the partners of the appellant firm and were directly related to each other. Neither any documentary evidences other than some confirmation letters were furnished.

5.4 During this proceeding, before Id. CIT(A) despite several notices issued (23.02.2022, 01.04.2022, 17.05.2022 and 26.09.2023) the appellant had not submitted any details or explanation in support of the claim. The grounds raised by the appellant in Form 35 in respect of the addition made u/s 68 are repetitive. The Judgment cited by the appellant in the case of CIT vs Lovely Exports is not applicable to this case as the facts are different and distinguishable. In the case of Lovely Exports, it was the share capital introduction into the company by the alleged bogus shareholders through banking channels that was disputed. There were no countering evidences with the department in the form of seized materials etc in that case to disprove the claim. Further, the ratio arrived at in the aforesaid case have been nullified by a specific amendment to section 68 vide Finance Act 2012. None of the above facts apply to the instant case as it is the partners of the firm who were alleged to

have contributed cash payments on behalf of the appellant, and the seized materials and the sworn statements proved otherwise. On the other hand, the **Judgment of the Madras High Court in the case of B. Kishore Kumar V DCIT** highlighted by the AO directly applies to this case.

5.5 Therefore, the explanation offered by the appellant about the nature and sources of the payments credited in the books of account are not acceptable. Consequently, it is deemed that the appellant had not discharged its onus in proving that the cash payments made to the landowners as per the JDA were from explained sources. Accordingly, the additions made u/s 68 on account of the cash payments of Rs.82.25 lakhs for A. Y. 2017-18 and Rs.20,00,000/- for A.Y. 2018-19 stands confirmed.

5.6 The second issue is on the credits in the Balance Sheet where nature and source were not proved. The balance sheet, as on 31/3/2017, showed unsecured loan of Rs.5 Lakhs in the name of one Mr. Imran. Similarly, as on 31/3/2018, unsecured loans amounting to Rs.5 lakhs, Rs.3.50 Lakhs and Rs.27.82 Lakhs were reflected on the names of Mr. Imran, Mr. Abdul Ansar and Mr. Hidayathulla.

5.7 During assessment proceedings, the appellant was specifically required to substantiate the genuineness of the liability claimed by proving the identity, genuineness and creditworthiness of the credits shown. However, the details and evidences were not furnished in spite of specific direction of the AO.

5.8 Considering the failure on the part of the appellant to substantiate the nature and source of Rs.5 Lakhs for the A/Y 2017-18 and amount totaling to Rs.31,32,000/- for the A/Y 2018-19 credited in the books of accounts during the above years as

unsecured loans, Rs.5 Lakh and Rs.31,32,000/- were added as unexplained cash credits u/s. 68 of the Act for A/Y 2017-18 and 2018-19 respectively.

5.9 No explanation was offered by the appellant in respect of the above additions during this proceeding despite several notices and opportunities provided. Therefore, the additions made i.e. Rs.5 Lakh and Rs.3 1,32,000/-for A/Y 2017-18 and 2018-19 respectively were sustained by CIT(A). In view of the above, all the grounds of appeal for A. Y. 2017-18 and 2018 are dismissed and held against the appellant. Against this assessee is in appeal before us.

6. The ld. A.R. submitted that the learned AO was wrong in concluding that the Security Deposit of Rs. 82.25 lakhs paid during FY 2016-17 and Rs.20 lakhs for financial year 2017-18 is undisclosed income in the hands of the assessee firm because the assessee firm itself had disclosed the said amount in its financial statements for the FY 2016-17 and 2017-18 and hence the nature and the source of the said sum stood explained.

6.1 She further submitted that the ld. AO was wrong in making the addition of Rs. 82.25 lakhs and Rs. 20 lakhs u/s 68 in the hands of the assessee firm in spite of the fact that 5 out of 7 partners who had contributed the cash had confirmed and owned their respective contributions and their confirmation statements were duly submitted during the assessment proceedings.

6.2 She submitted that the ld. AO has failed to appreciate that the facts of this case are squarely covered by the judgement of the Supreme Court in CIT vs. Lovely Exports P. Ltd – 216 CTR 195 (SC) wherein the Honorable Apex Court held that the onus of the assessee is discharged on giving names and PAN of the investors. It

further held that, if at all, the Department would like to assess any income, the same can be done in the hands of the investor.

6.3 She submitted that the Id. AO was wrong in stating in Paras 8.1 and 8.2 of the Assessment order that there was considerable delay in producing the partners whereas in fact there was no inordinate delay in furnishing the details. The partners of the assessee firm are spread across many parts of South India. As a result of the short notice, the assessee firm could not produce the partners before the learned officer as time barring assessment was involved.

6.4 She submitted that the Id. AO was wrong in making the addition of Rs. 82.25 lakhs and 20 lakhs u/s 68 in the hands of the assessee firm by merely relying on the sworn statements of the partner Mr. Mohammed Ibrahim which are not binding on the assessee. The learned AO ought to corroborate the admission contained in the statement, if any, with independent evidence. If AO was not satisfied with the particulars, it would have issued summons to the partners to verify the same. The AO has not enquired into anything vaguely not believing on the particular as filed by the assessee is bad in law.

6.5 She submitted that the Id. AO was wrong in placing reliance on the judgment of Honorable Madras High Court in the case of B. Kishore Kumar vs. DCIT (supra) because the facts of that particular case are clearly different and distinguishable from the facts in this particular case of the assessee firm. The well settled position of law is that while the revenue can use a statement recorded u/s 132(4) as a piece of evidence but the statement itself cannot be conclusive

evidence. The revenue ought to corroborate the admission contained in the statement with independent evidence.

7. On the other hand, ld. D.R. submitted that statement recorded u/s 132(4) and 131 of the Act which is not retracted by assessee and this is important evidence and it can be basis for initiation of proceedings u/s 153C of the Act. For this purpose, she relied on the judgement of Hon'ble Supreme Court in the case of Roshanlal Sanchiti Vs. CCIT 292 Taxman 549 (SC).

7.1 Further, she relied on the judgement of Hon'ble Supreme Court in the case of Video Master Vs. JCIT (378 ITR 374), wherein held that *"it is not possible to say that this is the case of no evidence at all in as much evidence in the form of statement made by assessee himself and other corroborative material are there on record."*

7.2 For the same proposition, she relied on the judgement of Hon'ble Kerala High Court in the case of CIT Vs. Abdul Razak, wherein held that *"self-serving retraction without anything more cannot be dispel statement made u/s 132(4) of the Act."*

7.3 She also relied on the judgement of Hon'ble Delhi High Court in the case of CIT Vs. Chetan Das Lachman Das wherein held as follows:

"13. Coming to the order of the Tribunal, we are of the view that the reasons given by it to distinguish the judgment of the Supreme Court cited (supra) are not sound. Firstly, there was seized material in the present case to show that the assessee has been indulging in off-record transactions. The observation of the Tribunal that no evidence was found to show that the actual turnover of the assessee was more than the declared turnover is hair splitting. The Tribunal lost sight of the fact that all was not well with the books of account maintained by the assessee and it has been keeping away its income from the books. That should have been sufficient for the Tribunal to examine the estimate made by the Assessing Officer, having regard to the principles laid down in the judgment of the Supreme Court (supra). The Tribunal also failed to note the difference between Section 158BB appearing in the Chapter-XIVB and the assessment made by virtue of the provisions of Section 153A of the

Act. Secondly, the Tribunal expects the purchasers from the assessee to come forward and declare that they have paid more than what was appearing in the sale bills issued to them and has commented upon the lack of any inquiry from the purchasers on this line. Suffice to say that this throws an impossible burden on the Assessing Officer, having regard to the observations of the Supreme Court that the assessee cannot be permitted to take advantage of his own illegal acts, that it was his duty to place all facts truthfully before the assessing authority, that if he fails to do his duty She cannot be allowed to say that assessing authority failed to establish suppression of income, that the facts are within his personal knowledge and therefore it was the burden of the assessee to prove that there was no suppression. Thirdly, the Tribunal has stated that there was no corroborative material to substantiate the contents of the loose papers found during the search. We are not impressed by this reason at all. The papers are not denied or disputed by the assessee. The CIT (Appeals) has found that the partners of the assessee firm had admitted to the practice of suppressing the profits. The papers themselves show two different rates, one higher and the other lower and on comparison with the sale bills it has been found that the sale bills show the lower rate and these findings have not been denied by the assessee. The Tribunal, therefore, erred in looking for some other corroboration to substantiate the contents of the loose papers, overlooking that the loose papers needed no further corroboration and the sale bills compared with the seized papers themselves corroborated the suppression of income. Fourthly, the Tribunal has relied on the observations of the CIT (Appeals) that no serious consideration can be given to the loose papers and has held that this shows that there is "nothing more in Revenue s kitty apart from those said loose papers pertaining to November, 2005 (financial year 2005-06) to support suppression of sales receipts on the part of the assessee firm". The Tribunal, with respect, has misread the observations of the CIT (Appeals) and has relied on a single observation without reading the order of the CIT (Appeals) as a whole. Moreover, in such cases, it is expected of the Tribunal to also independently examine the decision of the CIT (Appeals) which is impugned before it. In such cases it would be more appropriate to find out or ascertain whether there is any positive material which is in support of the assessee's case or anything upon which the assessee can rely in order to discharge the burden placed upon him in the light of the judgment of the Supreme Court in H M Esufali H. M. Abdulali (supra). Mere negative findings should not be made use of to throw out the case of the department. Lastly, the reliance placed by the Tribunal on the judgment of this Court in CIT v. Anand Kumar Deepak Kumar, (2007) 294 ITR 497 does not seem appropriate. There it was held that there was no presumption that unaccounted sales in the pre-search period would continue in the post search period also. This judgment has no application to the present case because the search took place on 13.12.2005 which falls in the year relevant to the assessment year 2006-07. The assessments under Section 153A of the Act have been completed up to and including the assessment year

2006-07. Even if there can be no presumption that after 13.12.2005 there could have been unaccounted sale of Hing or compound Hing, it is hardly material since only a period of 31/2 months were left aft e date of search till the end of the previous year i.e. 31.3.2006.”

7.4 Further, she relied on the judgement of Hon’ble Jharkhand High Court in the case of Mahaveer Prasad Rangta Vs. CIT 266 CTR 175 wherein held that *“where the assessee has not adduced any rebuttal evidence to show that entries made in any diary/ loose slips recovered during the search are not income in the hands of assessee, addition to be upheld.”*

7.5 She further relied on the judgement of Hon’ble Madras High Court in the case of Tiru S. Shyam Kumar Vs. ACIT 99 Taxmann.com 39, wherein held that *“where entries in loose slips are clear and legible pointing out of money payment for purchase of property by assessee addition u/s 69 was justified.”*

7.6 She also relied on the order of Tribunal Mumbai Bench in the case of Ali Akbar Sami Chowdhari Vs. DCIT in ITA No.455/Mum/2024 for the assessment year 2015-16 order dated 17.5.2024, wherein held as follows:

10. “In the statement of Shri Sandeep Runwal the list is attached wherein Shri Sandeep Runwal has given the details of cash received on sale of flats at various projects of the Runwal Group with names of the customers and the exact amount. The name of the assessee is at Sl.No.21 for the Flat No. 501 at Runwal Elegante which shows the cash receipt by Runwal Group of ₹.82,13,261/-. The contention of the counsel that it is merely an estimation defies all commercial logic because an estimated figure is always a complete figure. But the figure mentioned hereinabove is so accurate that it cannot considered as an estimated figure. Most important fact is that the recipient i.e., seller has admitted of having received a cash component of the transaction. Therefore, it is reasonable to conclude that the payee must have made the said payment. The undisputed fact is that the assessee has in fact purchased the flat from Runwal Group. When the purchase is not in dispute, the payment is not dispute then in all probability the cash component is also

correct. The seller has admitted of having received on-money which is the income of the seller and no prudent business man would offer income which it has never earned / received. The decision of the Coordinate Benches are misplaced in as much as each case has to be decided on the facts of its own and since in the case in hand the income has been assessed in the hands of the seller applying the principles of preponderance of probability on the facts of the case in hand, we do not find any reason to interfere with the findings of the Ld.CIT(A)."

7.7 According to her, the initiation of proceedings u/s 153C of the Act is rightly made and it is to be confirmed.

8. We have heard the rival submissions and perused the materials available on record. In this case assessee explain the entry of Rs.82.25 lakhs cash payment made on 3.10.2016 and Rs.20 lakhs on 19.4.2017 mentioned in JDA as follows:

Date of payment of CASH as per the JDA seized.	Cash payment as evidenced in the seized JDA	The partner in whose name the firm has now made claim of having introduced the cash.	Amount	Whether the firm produced confirmation certificate of the person?
3/10/2016	82,25,000	Yousuf Subbayakatta	49,75,000	NO
		Muttam Khalid	2,50,000	NO
		MB Yousuf	5,00,000	Yes
		Ahammed Ashraf Khader	2,00,000	Yes
		Muhamemd Ibrahim M	3,00,000	Yes
		Marika Abdul A Azeez	5,00,000	Yes
		Abdul Khader PS	15,00,000	Yes
		19/4/2017	20,00,000	Muttam Khalid Abdul Khader RTGS-
Cash -	4,00,000			Yes

8.1 As seen from the above, there was no confirmation from Yusuf Subbayakatta to the tune of Rs.49.75 lakhs (3.10.2016), Muttam Khalid for Rs.2.5 lakhs (3.10.2016) and Muttam Khalid Abdul Khader on 19.4.2017 for Rs.16 lakhs. Thus, there is a confirmation for the balance amount as received from other partners namely MB Yusuf (Rs.5 lakhs), Ahmmed Ashraf Khader (Rs.2 lakhs), Muhammed Ibrahim M (Rs.3 lakhs), Marika Abdul A. Azeez (Rs.5 lakhs), Abdul Khader PS (Rs.15 lakhs). Thus, totaling of Rs.30 lakhs in assessment year 2017-18 was duly confirmed by the partners as they paid to the assessee firm. Similarly, a sum of Rs.4 lakhs in cash was paid to assessee on 19.4.2017. To that extent addition cannot be made as there is a due confirmation from the parties. In this case, we find that there is no ambiguity about the identity of the parties in respect of an amount of Rs.30 lakhs as it has been introduced by the partners. In such circumstances, if ld. AO was of the opinion that the amount is not proved in the hands of the partner, he should have considered it in their individual hands and not in the hands of the assessee. This view is duly supported by the following judgements:

- a) Judgement of Hon'ble Madras High Court in the case of CIT Vs. Taj Borewell (291 ITR 232)
- b) Judgement of TS & AP High Court in the case of CIT Vs. M. Venkateswara Rao & Others (370 ITR 212) (TS & AP HC)
- c) Judgement of Punjab & Haryana High Court in the case of CIT Vs. Metal & Metals of India (208 CTR 457) (P&H)
- d) CIT Vs. Keval Krishna & Partners (18 DTR 121)

8.2 We find that Hon'ble Delhi High Court in the case of PCIT Vs Best Infrastructure Private Limited, 397 ITR 82 has held that statement under section 132(4) in the itself does not

constitute incriminating material. The relevant finding of the Hon'ble High Court is reproduced as under:

“38. Fifthly, statements recorded under Section 132 (4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Commissioner of Income Tax v. Harjeev Aggarwal (supra). Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in Smt. Dayawanti Gupta v. CIT (supra) where the admission by the Assessee themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessee were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission.”

8.3 As per section 31 of Indian Evidence Act, 1878, admissions are not conclusively proved as against admitted proof. In the absence of rebuttable conclusion, admission bind the maker when these are not rebutted or retracted. An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and the maker can show that it was incorrect. In our opinion admission made by the assessee will constitute a relevant piece of evidence but if the assessee contends that in making the admission, he had proceeded on a mistaken understanding or on misconception of facts or untrue facts, such admission cannot be relied upon without considering the aforesaid contention. In our opinion, the voluntary admission are not conclusive proof of the facts admitted and may be explained or shown to be wrong but they do raise an estoppel and shift the burden of proof to the person making the admission. It is to be noted that, unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Thus, the burden to prove “admission” as incorrect is on the maker and in case of failure of the maker to prove that the

earlier stated facts were wrong, these earlier statements are suffice to conclude the matter. If retraction or proved sufficiently, the earlier stated facts lose their effect and relevance as binding evidence and the authorities cannot conclude the matter on the basis of the earlier statements alone. However, bald retraction of earlier admission will not be enough after retraction. Such statements cannot automatically become nullified. If the assessee proves that the statement recorded was involuntary and it was made under coercion, the statement has no legal validity.

8.4 Further, there was a CBDT circular file no.286/98/2013-IT (Inv.II) dated 18.12.2014 which states as under:

“Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the IT Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.”

From the above Circular, it is amply clear that the CBDT has emphasized on its officers to focus on gathering evidences during search/survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion/under influence. Keeping in view the guidelines issued by the CBDT from time to time regarding statements obtained during search and

survey operations, it is undisputedly clear that the lower authorities have not collected any other evidence to prove that the impugned income was earned by the assessee.

.....
.....
8.5 At this stage, it is pertinent to refer to the judgment of the Supreme Court in the case of Vinod Solanki (2009) (233) ELT 157 observed as under :

"22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the Court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. [see Pon Adithan vs. Dy. Director, Narcotics Control Bureau (1999) 6 SCC 1]

8.6 In case of Romesh Chandra Mehta vs. State of West Bengal (1969) 2 SCR 461 although Hon'ble Court held that any statement made under ss. 107 and 108 of the Customs Act by a person against whom an enquiry is made by a customs officer is not a statement made by a person accused of an offence, but as indicated hereinbefore, he being an officer concerned or the person in authority, s. 24 of the Indian Evidence Act would be attracted.

8.7 It has been similarly held by the Hon'ble Supreme Court in the case of K.T.M.S. Mohd. & Anr. vs. Union of India (1992) (197 ITR 196) as under:

"We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice it to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made

either before the customs authorities or the officers of Enforcement Directorate under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and, if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means, that statement must be rejected brevi manu. At the same time, it is to be noted that, merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise, etc. to establish that such improper means have been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat, etc., against the officer who recorded the statement, the authority, while acting on the inculpatory statement of the maker, is not completely relieved of his obligation at least subjectively to apply its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down to this that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law that this Court, in several decisions, has ruled that, even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the Foreign Exchange Regulation Act or the Customs Act, etc., the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order be vitiated. Reference may be made to a decision of the Full Bench of the Madras High Court in Roshan Beevi vs. Jt. Secretary to the Government of Tamil Nadu, Public Deptt. etc. (1983) Mad LW (Crl.) 289 : (1984) 15 ELT 289 : AIR 1984 NOC 103, to which one of us (S. Ratnavel Pandian, J.) was a party."

8.8 In our opinion, the above additions cannot be made solely based on the statements recorded u/s 132(4) of the Act. Reliance is placed on following decisions:

(i) The Hon'ble Delhi High Court in Commissioner of Income-tax v. Harjeev Aggarwal [2016] 70 taxmann.com 95 (Delhi) held as under:

"21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other

documents found as a result of search but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such Examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB(1) read with Section 158B(b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/ material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/ material found during search in order to for an assessment to be based on the statement recorded."

(ii) In the case of Dr. E.G. Memorial Trust v. CIT (Exemption), Kolkata 2017 (11) TMI 1586 ITAT Kolkata, the Tribunal held as under: -

"6. We have carefully considered the entire gamut of facts, rival contentions raised by the parties before us and also the material referred to during the course of hearing. In the instant case originally Id. CIT(Bx) cancelled the registration certificate u/s. 12A of the Act vide order dated 22-2-2016. Against the order of Id, CIT(Ex) assessee preferred an appeal who directed the Revenue to provide an opportunity of cross-examination to assessee. Accordingly, appeal was allowed for statistical purpose."

(iii) In the case of CIT Vs. S. Khader Khan Son reported in 352 ITR 480 (SC) where the Hon'ble Supreme Court has held that:

-"Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition."

(iv) In the case of Kamla Devi S. Doshi v. Income-tax Officer [2017] 88 taxmann.com 773 (Mumbai - Trib.) / [2017] 57 ITR(T) 1 (Mumbai - Trib.) held as under: -

"We however are unable to persuade ourselves to subscribe to the view that such information arrived at on the basis of the stand-alone statement of the aforesaid person, viz. Sh. Mukesh Chokshi (supra), falling short of any corroborative evidence would however justify drawing of adverse inferences as regards the genuineness of the share transactions in the hands of the assessee. We though are also not oblivious of the settled position of law, as per which a very heavy onus is cast upon the assessee to substantiate the LTCG on sale of shares, as projected by her in the return of income for the year under consideration. Thus, to be brief and explicit, though the reopening of the case of the assessee in the backdrop of the aforesaid factual matrix cannot be faulted with, however such stand-alone information, i.e., the statement of Sh. Mukesh Chokshi (supra), cannot be allowed to form the sole basis for dislodging the claim of the assessee in respect of the LTCG reflected by her in the return of income for the year under consideration. We would not hesitate to observe that the lower authorities which have rushed through the facts to arrive at a conclusion on the basis of principle of preponderance of human probability, had however absolutely failed to appreciate that the said principle could have been validly applied only on the basis of a considerate view as regards the facts of the case in totality, and not merely on the basis of the standalone statement of the aforesaid third party, viz. Sh. Mukesh Choksi."

(v) In the case of Kailashben Manharlal Chokshi v. Commissioner of Income-tax [2008] 174 Taxman 466 (Gujarat) wherein held as under:"-

"26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to

such admission. Hence there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee."

"16.4 We have duly considered the contention of the assessee and also perused the documentary evidences produced by the assessee. On perusing the facts, it is apparent that the addition is made based on the general practice of cash payments made outside the books of accounts in the case of immovable property transactions. The AO was of the opinion that there are ample instances that cash payments are made outside the books of accounts in effecting money lending transactions and therefore, the statement made by Mr; R. Ravish can be relied and the addition sustainable. However, we do not subscribe to this view of the AO. In order to establish that the assessee had paid amount outside the books of accounts for effecting money lending transactions substantial evidence has to be placed on record which is absent in this case. It would be unjust if an addition is made on the assessee based on a statement made by third party without further making inquiries and collecting evidence. Therefore, we hereby request to delete the additions made by the Ld. AO in the concerned AY's.

This entire question is based on facts and therefore, no interference is necessary."

8.9 Thus, it is settled position of law that onus lies upon the Department to collect cogent evidence to corroborate the notings on the loose sheets. The additions cannot be made merely on the basis of notings on the loose sheet papers which are in the nature of "dumb documents" having no evidentiary value. The onus lies on the Department to collect the evidence to corroborate the notings on the loose sheets. In the present case, it is undisputed position that as a result of search and seizure action in the case of respondent-assessee and its group companies, no material whatsoever was seized and found indicating payment of on-money consideration at the time of purchase of the lands. Reliance in this regard can be placed on the following decisions:

- (i) Pr.CIT vs. Umesh Ishrani (2019) 108 taxmann.com 437 (Bom)
- (ii) CIT vs. Atam Valves (P.) Ltd. (2009) 184 Taxman 6 (P&H)
- (iii) CIT vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj)
- (iv) CIT vs. C.L. Khatri (2006) 282 ITR 97 (MP)
- (v) Pr.CIT vs. Kamlesh Prahladbhai Modi (2018) 94 taxmann.com 356 (Guj)
- (vi) CIT vs. Shri Girish Chaudhary (2008) 296 ITR 619 (Del)
- (vii) CIT vs. Vivek Aggarwal (2015) 56 taxmann.com 7 (Del)
- (viii) CIT vs. Salek Chand Agarwal (2008) 300 ITR 426 (All)
- (ix) CIT vs. Dinesh Jain (HUF) 352 ITR 629 (Del)

8.10 We find that the conclusions reached by the Assessing Officer are merely based on presumptions and assumptions without bringing corroborative material on record. It is settled position of law that no addition in the assessment can be made merely based on assumptions, suspicion, guess work and conjuncture or on irrelevant inadmissible material. Reliance can be placed in this regard on the following decisions:

- (i) Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC)
- (ii) Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC)
- (iii) CIT vs. Maharajadhiraja Kameshwar Singh of Darbhanga (1933) 1 ITR 94 (PC)
- (iv) Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC)
- (v) Umacharan Shaw & Bros vs. CIT (1959) 37 ITR 271 (SC)

(vi) Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (SC)

8.11. Further, the Hon'ble Delhi High Court in the case of CIT vs. Dinesh Jain (HUF), 352 ITR 629 after referring to the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC) held that no addition can be made taking into account notorious practice prevalent in the similar trade. The relevant findings vide para 14 and 15 are as under:

“.....

14. In Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa (1959) 37 ITR 288, the Supreme Court disapproved the practice of making additions in the assessments on mere suspicion and surmise or by taking note of the notorious practices prevailing in trade circles. At page 299 of the report, it was observed as follows:

“Adverting to the various probabilities which weighed with the Income-tax Officer we may observe that the notoriety for smuggling food grains and other commodities to Bengal by country boats acquired by Sahibgunj and the notoriety achieved by Dhulian as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf.”

15. This takes care of the argument of Mr. Sabharwal that judicial notice can be taken of the practice prevailing in the property market of not disclosing the full consideration for transfer of properties”.

8.12. The Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO (1981) 131 ITR 597 (SC) held that the capital gains is intended to tax the gains of assessee not what an assessee might have gained and what is not gained cannot be computed as gain and the assessee cannot fastened with the liability on a fictional income.

8.13 Similarly, the Hon'ble Supreme Court in the case of CIT Vs. Shivakami Co. (P.) Ltd. (1986) 159 ITR 71 (SC) held that unless

there is evidence that more than what was stated was received, no higher price can be taken to be the basis for making addition.

8.14 Being so, the following additions in assessment year 2017-18 made u/s 68 of the Act cannot be sustained as there was a confirmation from concerned partners as they contributed to the firm:

M.B. Yousuf	-	Rs. 5,00,000/-
Ahammed Ashraf Khader	-	Rs. 2,00,000/-
Muhammed Ibrahim M	-	Rs. 3,00,000/-
Marika Abdul A Azeez	-	Rs. 5,00,000/-
Abdul Khader PS	-	<u>Rs.15,00,000/-</u>
Total additions:	-	<u>Rs.30,00,000/-</u>

8.15 These additions are deleted in assessment year 2017-18 for below mentioned balance amount as there was no confirmation which required verification from the end of the ld. AO as this is said to be contributed by the assessee's firm. The assessee was to prove all the ingredients of section 68 of the Act subject to the condition that these ingredients are appearing in the books of accounts of the assessee and not on the basis of statement recorded u/s 132(4) or 131 of the Act or uncorroborated seized materials in the form of loose slips.

Yousuf Subbayakatta	-	Rs.49,75,000/-
Muttam Khalid	-	<u>Rs. 2,50,000/-</u>
Total:	-	<u>Rs.52,25,000/-</u>

8.16 Thus, the only issue relating to addition of Rs.52.25 lakhs made u/s 68 of the Act is remitted to the file of ld. AO for fresh consideration.

8.17 There was another addition of Rs.5 lakhs made by ld. AO u/s 68 of the Act, which is said to be received from Mr. Imran in the assessment year 2017-18.

8.18. The ld. A.R. submitted that placing reliance on the seized material is not proper and all the additions on the basis of the above loose slips should be deleted in the assessment year 2015-16 since;

(i) there is no documentary evidence either to support the statements of Mr. R. Ravish or of the parents of the students; and
ii) the seized material is in the form of various loose sheets, scribblings, and jottings having no signature or authorization from the assessee's side. These are unsubstantiated documents and there is nothing to suggest any undisclosed assets of assessee found during the course of search. More so, search action not resulted in recovery of any undisclosed assets in the form of landed property, building, investments, money, bullion, jewellery or any kind of movable or immovable assets.

8.19 As discussed in paras 8.13 to 8.15 above, we remit this issue to the file of ld. AO with a direction to the assessee to prove the ingredients of section 68 of the Act. If these ingredients are appearing in the balance sheet as on 31.3.2017, which is emanated from the corroborative seized material only and not based on statement recorded u/s 132(4) or 131 of the Act.

8.20 Hence, we are of the opinion that it is appropriate to remit the issue to the file of ld. AO to re-examine the issue with a direction to assessee to furnish the necessary details before ld. AO.

9. In the result, appeal of the assessee in ITA No.414/Bang/2024 is partly allowed for statistical purposes.

10. In the assessment year 2018-19, in ITA No.415/Bang/2024, there was an addition of Rs.20 lakhs u/s 68 of the Act as seen from the above table. Out of this, an amount of Rs.4 lakhs has been confirmed by Muttam Khalid Abdul Khader, which was received by cash as seen from the above table. Only the balance amount of Rs.16 lakhs is not confirmed which has been received by RTGS from Muttam Khalid Abdul Khader. As discussed in earlier year, we remit this issue also to the file of ld. AO for fresh consideration.

11. There was another addition of Rs.31.32 lakhs u/s 68 of the Act in this appeal. This is said to be received from following persons:

a) Abdul Ansar	-	Rs.3.5 lakhs
b) Hidayatullah	-	<u>Rs.27.82 lakhs</u>
Total	-	<u>Rs.31.32 lakhs</u>

11.1 The contention of the ld. D.R. is that the assessee has not proved the identity, genuineness and creditworthiness of the parties. Admittedly, these credits are appearing in the books of accounts of the assessee for the year ended on 31.3.2018. The assessee is required to prove the credit with regard to identity, genuineness and creditworthiness of the parties to the extent of credit appearing in the balance sheet as on 31.3.2017 excluding the opening balance. Accordingly, this issue is remitted to the file of ld. AO for reconsideration on similar lines as in assessment year 2017-18.

12. In the result, ITA No.415/Bang/2024 is partly allowed for statistical purposes.

ITA Nos.167 & 168/Bang/2024 (AYs 2017-18 & 2018-19)

Tabesco Hindustan Infra Developers Pvt. Ltd.:

13. Now we will adjudicate ITA Nos.167 & 168/Bang/2024 for the AY 2017-18 & 2018-19. Though the appeals were filed by different assessees, the issue in both these appeals are common, hence, these are clubbed together, heard together and disposed of by this common order for the sake of convenience. The assessee in ITA No.168/Bang/2024 has raised following grounds of appeal:

“1. *The learned CIT(A), erred in passing the Order in the manner he did.*

2. *That the assessment made without jurisdiction and hence proceeding under section 153C is void ab initio.*

3. *The learned CIT(A) failed to appreciate that in absence of any incriminating material the assumption of jurisdiction under section 153 C is wholly illegal and liable to be quashed.*

4. *The learned CIT(A) further failed to appreciate that the Assessing Officer failed to provide an opportunity of cross examination which is against the principle of natural justice.*

5. *The learned CIT(A) failed to appreciate that the statement taken at the time of survey cannot be considered for making addition u/s 153 C of the act.*

6. *The learned Assessing Officer is not justified in law in taxing Rs. 3,58,14,436/- which was declared in the oath statement and same has been later retracted by not declaring the same in the return of income filed and additions made are purely on assumptions and presumptions.*

7. *The learned Assessing Officer is not justified in law in additions made in the hands of the appellant as unexplained money, mainly based on the statement made at the time of survey without any corroborative evidence or material.*

8. *The learned assessing officer has grossly ignored the fact that the statement recorded at the time of survey was taken under*

coercive duress and with a totally confused state of mind of the appellant which was later retracted.”

13.1. At the time of hearing, assessee pressed only the ground with regard to sustaining addition of Rs.10,80,000/- in assessment year 2017-18 and sustaining addition of Rs.3,58,14,436/- in assessment year 2018-19 only merely on the contention of oath statement though it was retracted by the assessee by not declaring the same in the return of income filed by the assessee.

14. Facts of the case are that the assessee is a partnership firm, in which Mr. Ibrahim Kaleel and Mr. Ibrahim B.A. are the partners of the firm. A search and seizure operation u/s 132 was conducted in the case of Mr. Mohammed Ibrahim and Mr. Ibrahim Kaleel. M/S Tabesco Hindustan Infra Developers Pvt. Ltd. is engaged in developing the residential-cum-commercial complex project, "Tabesco Inn" at Kanhangad in a owned by the said company, which was purchased in F.Y. 2014-15. Mr. Mohammed Ibrahim M is the Managing Director of the company and Mr. Basheer Malikayil is one of the directors. Mr. Ibrahim Kaleel, the Managing partner of M/s MKH Infrastructure has a very long-standing association with Mr. Mohammed Ibrahim, the MD of M/S Tabesco Hindustan Infra Developers Pvt. Ltd. The construction contract of the residential-cum-commercial project, "Tabesco Inn", was given to M/S MKH Infrastructure. Initially, the construction contract agreement between M/S MKH Infrastructure and M/S Tabesco Hindustan Infra Dev. Pvt. Ltd. was executed on 16th Nov, 2016 to construct the structural part of the Residential cum Commercial project 'Tabesco Inn' for a total cost of Rs. 41,88,34,000/-. However, later on, this contract agreement was cancelled by both the parties and an item-wise approach was agreed upon. During the course of search at the

residences of Mr. Mohammed Ibrahim, Mr. Ibrahim Khaleel, etc., documents belonging to the assessee have been seized. During the course of survey at the business premises of M/S Tabesco Hindustan Infra Developers Pvt. Ltd., the evidences regarding payments in cash and cheque made to the assessee were found and impounded. Sworn statements were recorded from Mr. Ibrahim Kaleel and Mr. Mohammed Ibrahim on various dates, who admitted to the contract receipts in cash and cheque as detailed in the seized materials.

14.1 During the course of the search in the case of Mr. Ibrahim Kaleel at his residence, incriminating materials inventoried as A/IK/03 have been seized. Page No: 83 to 91 contain the details of cash vouchers received, which were signed by Mr. Ibrahim Kaleef, Managing Partner, M/S. MKH Infrastructure as the contract receipts in respect of the Tabesco project. The relevant portion of the sworn statement of Mr. Ibrahim Kaleel is as follows:

“Q.38. I am showing you the document marked as Annexure A/IW03, Page Nos.83 to 91, which were found and seized during the course of search u/s 132 of the Income Tax Act at your residence at Door No. 20-6-363/1 Manar, 2 Cross Kandak, Mangalore. Please explain the contents.

Ans: These are the vouchers towards payment of construction expenses (contract amount) to MKH Infrastructure by Tabesco Hindustan Infrastructure for the project Tabesco Hindustan. Mr. Basheer Malikayil, who is an NRI and Sri Mohammed Ibrahim are the partners of Tabesco Hindustan Infrastructure. Total amount received by M/s. MKH Infrastructure as per these vouchers amounting to Rs.1,88,81,000/-. Out of this amount, an amount of Rs.88, 00, 000/- represents received through cheque and rest amount of Rs. 1,00,81,000/- is received by cash.”

14.2 The details of evidences for payment made in cash and cheque amounting to Rs.1,88,81,000/- were summarized in the respective assessment orders based on the cash vouchers found and seized. The vouchers were serially numbered by assessee but

the investigation team could not find the voucher nos.9, 10, 11 and 13. Thus, the details of payments found during the search were only partially available.

14.3 Further, it was evident from the notebook seized from the residence of Mr. Ibrahim Kaleel & inventorised as: A/IK/09 that various amounts not mentioned above have also been received in cash by Mr. Ibrahim Kaleel. As per page 8, date: 8/8/2017- Bashir (Tab) – Rs.41,09,600/-; page9, dated 2/8/2017 'Jancy - tab' -Rs.30,81,000/-; page - 13, dated 8/7/2017 - 'Jancy Tab' - Rs. 15 Lakhs; page 14 — 3/7/2017 —'Jancy tab' - Rs. 5,40,000/-; 17/6/17-Jancy Tab — 9,00,000/-; 29/6/17 - Jancy Tab - 1,00,000/-; page 26, 3/4/2017-Cash Tab 25,00,000/-; 25/4/17 — cash Tab — 1,00,000/- etc. These entries denoted the receipt of cash from Miss Jancy Dinu, Office Secretary, M/S Tabasco Hindusthan Infra Developers Pvt Ltd, receipt from Mr. Basheer etc. If these cash receipts were also considered by the AO along with receipt of Rs.1,00,81,000/as per the vouchers seized from the residence of Mr. Ibrahim Kaleel, the total CASH receipt would have been much more than what Mr. Ibrahim Kaleel had stated in the sworn statements. The seized materials also contained connected expenditures entered each day against the receipts and the fact that the cash balance was arrived at the end of each day, clearly proves that the cash receipts were genuine and the details recorded in the seized materials were accurate, corroborative and self-explanatory in nature.

14.4 It was also seen that as per the material inventorised as: A/THI/8 — page 7, impounded from the office of M/s. Tabasco Hindustan Infra Developers Pvt Ltd during the course of survey u/s. 133A, the total payments made to the contractor; M/S. MKH

Infrastructure amounted to Rs. 2,90,30,600/-, of which Rs. 2,00,30,600/- had been paid as CASH and Rs. 90,00,000/- in cheque marked 'TOTAL PAID WHITE'. These entries correspond and correlate to the entries made in the seized book from the residence of Mr. Ibrahim Kaleel: A/1K/9.

14.5 Mr. Mohammed Ibrahim, the MD of M/S Tabasco Hindustan Infra Developers Pvt Ltd had admitted in the sworn statement recorded u/s. 132(4) on 31/8/2017 that out of the total payment of Rs.2,90,30,600/- made to M/S. MKH Infrastructure for the construction contract till the date of search, Rs.2,00,30,600/- has been paid as cash. Mr. Mohammed Ibrahim had again confirmed the cash payment of Rs.2,00,30,600/- in the statement recorded u/s. 131 on 5/9/2017 as well.

14.6 The receipt of the contract payments in cash has also been admitted categorically by Mr. Ibrahim Kaleel in his statement on oath. Considering II of the above facts, on the basis of the evidences seized u/s. 132 and also impounded u/s. 133A as stated above in detail, it is evident the total cash received by the assessee towards the construction contract amount to Rs.2,00,30,600/- out of the total receipt of Rs. 2,90,30,600/- up to the date of search. During the remaining period of financial year 2018-19, after the search, the assessee firm had received contract amount of Rs. 1,38,67,960/- by cheque. Therefore, the total contract receipt by cheque during F.Y 2017-18 amounted to Rs.2,18,67,960/-.

14.7 Thus, the Id. AO made addition of Rs.1,90,30,600/- u/s 69B of the Act towards payment made to MKH Infrastructure in cash and Rs.59 lakhs u/s 69C of the Act towards unexplained expenditure incurred by the assessee. However, assessee challenged before us addition of Rs.3,58,14,436/-. However, we

confine to the issue relating to the addition of Rs.1,90,30,600/- towards unexplained payment in investment in building construction u/s 69B r.w.s. 115BBE of the Act and unexplained expenditure u/s 69C of the Act at R.59,00,000/- and Rs.1,10,90,104/- towards unexplained cash receipts totalling of Rs.3,60,20,704/-.

15. We have heard the rival submissions and perused the materials available on record. In this case, the assessee argued only ground relating to the addition of Rs.28 lakhs in ground Nos.6 to 11 only. No other grounds are argued before us. Hence, not considered. In the assessment year 2017-18 in ITA No.167/Bang/024, there was 3 payments considered by ld. AO for making addition as follows:

- | | |
|---|---------------|
| a) Unexplained investment for building - | Rs.10 lakhs |
| b) Unexplained expenditure in cash - | Rs.8 lakhs |
| c) Unexplained expenditure towards
Other expenditure | - Rs.10 lakhs |

15.1 These details are found in page 22 & 23 marked as A/THI/8. The first Rs.8 lakhs was paid for obtaining Fire NOC and the payment has been said to be made by Mr. Basheer on behalf of company. Another Rs.10 lakhs also paid reflected in the ledger of the assessee of company in name of Mr. Ibrahim at pages 24 to 26 of the seized material marked as A/THI/8 impounded from business premises of assessee. According to the ld. AO, this transaction not reflected in the books of accounts of the assessee. On questioning the MDA Md. Ibrahim admitted this statement in his statement recorded u/s 132(4) of the Act recorded on 31.8.2017 and also on 30.10.2017 and also on 5.9.2017 vide statement recorded u/s 131 of the Act. However, the searched team not at all

carried out enquiry with the recipient of the statement. The ld. AO solely relying on the loose slips found during the course of search action coupled with the statement recorded u/s 132(4) of the Act, addition was made. According to the ld. AO in spite of issuing several chances the assessee has not furnished any evidence either to explain the source of the cash or to prove that the transactions are already booked in the accounts. Thus, he made an addition of Rs.28 lakhs in the assessment year 2017-18. Now the contention of the ld. A.R. is that the addition is based only on the loose slips based on statement recorded u/s 132(4) of the Act and unsubstantiated loose slips and there was no corroborative material to sustain the addition. Admittedly, seized material A/THI/8 page 7 impounded from the office of the assessee during the course of search u/s 133A f the Act contains the total cash payment of Rs.2,00,30,600/-. The statement recorded on 30.8.2017 from Mrs. Jansi Dinu who is working as a office secretary stated that these entries made in impounded material A/THI/8 relating to cash payments. Her statement has been confronted to Mr. Md. Ibrahim, MD of the assessee company. He has also confirmed the same. However, while filing the return of income, they have not offered it for taxation on the reason that these are based on statement recorded u/s 132(4) of the Act and uncorroborated loose slips. It was mentioned by the ld. AO in the assessment order in para 8.3 that the voucher missing are not found and thus, it means that there was no full proof for the payment of cash to various parties. There was no examination of the parties concerned who has received the payment and the purpose of payment. The ld. AO merely relied upon the loose papers obscure noting made in that loose slips and statement of Mr. Md. Ibrahim recorded u/s 132(4) &

131 of the Act. Thereafter, ld. AO made his own analysis which is not supported by any corroborative evidence.

15.2 The Tribunal in the case of Sri Y. Siddaiah Naidu, Tirupathi vs. Asst. Commissioner of Income-Tax 2015 {2} TMI 403 - ITAT HYDERABAD held that it is very much clear that from such notings, it cannot be deduced whether they are receipt or payments nor it can be concluded whether they are in relation to any particular transaction. In these circumstances, no addition can be made on the basis of such document.

15.3 The seized material which is placed on record shows certain receipt entries and it is very strange to believe that the assessee has authorised any person to write it as it does not contain any attestation from the assessee side being not having any name or seal of the assessee. Being so no credence to be given to this document.

15.4 The Bangalore Tribunal in the case of Kirloskar Investments Finance Ltd. v. Assistant Commissioner of Income-tax [1998] 67 ITD 504 (Bang.) held that the providing of the copy of the statement or letters is not sufficient opportunity. Oral evidence of persons concerned with the transaction are important piece of evidence and before it could replace the written evidence, the party against whom such oral evidence is being used must be allowed the opportunity of examining the person because, both the types of evidences need to weighed properly before rejecting one for the other.

15.5 The seized material shows vague figures presumed by the AO to be unaccounted transactions. These are unsigned documents and not supported by any corroborative material.

Further the alleged parties to the transactions were not examined or cross-examined. At this point, it is appropriate to rely on the judgment of the Mumbai Bench in the case of ACIT v. Layers Exports P. Ltd [2017] 53 ITR (Trib) 416 (Mumbai), wherein it was held that no addition could be simply made on the basis of uncorroborated notings in the loose papers found during the search because addition on account of alleged payment made simply on the basis of uncorroborated noting and scribbling on loose sheets made by some person have no evidentiary value and is unsustainable and bad in law.

15.6 The Hon'ble Supreme Court in Common Cause (A Registered Society) v. UOI [2017] 394 ITR 220 (SC) observed with regard to evidentiary value that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not,

therefore not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 of Evidence Act so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by the Court. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. In view of the above, reliance on Seized material for making addition cannot be sustained.

15.7 The Delhi Tribunal in *Vijay Kumar Aggarwal v. ACIT 2Q17 (5) TMI 1354* held that it is clear that the presumption of facts u/s 292C of the Act is not a mandatory or compulsory presumption but a discretionary presumption. Since, the word used in the said Section is "may be" and not "shall". Secondly, such a presumption is rebuttable presumption and not a conclusive presumption because it is a

presumption of fact not a presumption of law. In the present case, the assessee from the very beginning stated that the documents found during the course of search did not belong to him.

15.8 Therefore, the addition made by the AO is only on the basis of surmises and conjecture without bringing any cogent material on record to substantiate that the assessee was engaged in the business of gold and jewellery and the AO had not brought any material on record to substantiate that the denial of the assessee was false. 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 153A. 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. Therefore, addition made on account of such seized material is not sustainable,

15.9 The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) held as follows: -

"Not allowing the assessee to cross-examine the witness by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. (Para 6). Assessee had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in

fact, sold to the said dealers/witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above, (para 7) If the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice, (para 8)"

15.10 The Delhi Tribunal in the case of Veena Gupta v. ACIT in ITA No.5662/Del/2018 dated 27.11.2018 relying on the above judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries (supra) quashed the assessment order on the reason of not providing cross-examination of witnesses whose statements were recorded.

15.11 Further, the Hon'ble Supreme Court in the case of CIT v. Odeon Builders (P.) Ltd., 418 ITR 315 (SC) head-note is as follows:

"[Section 37\(1\)](#) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Bogus purchase) - Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to assessee, thus, denying opportunity of cross examination to assessee, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return - He held that purchases made by assessee was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings - Whether no substantial question of law arose from impugned order of Tribunal - Held, yes [Para 4] [In favour of assessee]"

15.12. The Hon'ble High Court of Karnataka in [Kothari Metals v. ITO](#), 377 ITR 581 (Karn) held as under: -

"Held, allowing the appeal, that the non-furnishing the reasons for re-opening an already concluded assessment goes to the very root of the matter. Since such

reasons had not been furnished to the assessee, even though a request for them had been made, proceedings for the re-assessment could not have been taken further on this ground alone.

Besides this, the statement of some other person which was recorded was the basis of reassessment and the assessee was asked to explain it but the statement was itself not furnished to the assessee. As such, besides non-furnishing of the reasons for re-opening there was also a gross violation of the principles of natural justice. The reassessment was not valid."

15.13 No assets commensurate with the alleged undisclosed income is found by the AO. The unbounded loose sheets having jottings are not speaking either by itself or in the company of others and not corroborated by enquiry, cannot be the basis of any inference so as to sustain the addition.

15.14. There are various loose sheets, scribblings and jottings having no signature or authorization from the assessee's side. These are unsubstantiated documents and there is nothing to suggest any undisclosed assets of assessee found during the course of search. More so, it does not show any recovery of the undisclosed assets in the form of landed property, building, investments, money, bullion, jewellery or any kind of movable or immovable assets.

15.15. Being so, the seized material relied by the assessing officer for sustaining addition is not speaking one in itself and also not speaking in conjunction with some other evidence which the authorities found during the course of search or post search investigation. Thus, the well settled legal position is that a non-speaking document without any corroborative material, evidence on record and finding that such document has not materialised into transactions giving rise to income of the assessee which had not been disclosed in the regular books of accounts of the assessee has to be disregarded for the purpose of assessment to be framed

pursuant to search and seizure action. In these cases, moreover the documents are relied upon by the AO without confronting to any parties i.e seller or buyer of unaccounted transactions. These documents cannot bring assessee into tax net by merely pressing to service the provision of Sec 132(4A) r.w.s Sec 292C of the IT act, which creates deeming fiction on the assessee subject to search wherein it may be presumed that any such document found during the course of search from the possession and control of such document are true. What has to be noted here is that deemed presumption cannot bring such a document in the tax net and the presumption is rebuttable one and the deemed provisions have no help to the department. Therefore, in these cases addition is made by AO on arbitrary basis relying on the loose papers, containing scribbling, rough and vague noting's in the absence of any corroborative material and this material cannot be considered as transactions carried on by assessee giving rise to income which are not disclosed in the regular books of accounts by assessee. We place reliance on the following judgements in support of our above findings:

- (i) CIT vs D.K.Gupta 174 Taxman 476 (Delhi)
- (ii) Ashwini Kumar vs ITO 39 ITD 183 (Delhi)
- (iii) S.P.Goyal vs DCIT (Mum) (TM) 82 ITD 85 (MUM)
- (iv) D.A.Patel vs DCIT 72 ITD 340 (Mum)
- (v) Amarjeet Singh Bakshi (HUF) vs ACIT 86 ITD 13 (Delhi) (TM)
- (vi) Nagarjuna Construction Co Ltd vs DCIT 23 Taxman.com 239
- (vii) CIT vs C.L.Khatri 174 Taxman 652
- (viii) T.S.Venkatesan vs ACIT 74 ITD 298
- (ix) CIT vs Atam Valves Pvt Ltd 184 Taxman 6 (P&H)

15.16 As per seized material A/THI/8 page no.7, which reflects the transaction in respect of payment to MKH Infrastructure through cash and cheque amounting to Rs.2,00,30,600/- in cash and Rs.90 lakhs by cheque. Further, page nos.9 & 10 of same seized material amount typed as 'W' was said to be received by cheque amounting to Rs.67,14,908/- and typed as 'B' are the amount received through cash amounting to Rs.88,90,604/-. Further, seized material at page Nos.20 & 21 show the amount received 'W' through cheque at Rs.92,14,908/- and typed as 'B' was of Rs.1,08,90,604/-. Finally, the assessee stated the payment by cash, cheque and receipt by cash and cheque as follows:

Payment made to MKH Infrastructure in cash	Rs.2,00,30,600	AY 2018-19
Cash payments received from customers	Rs.1,08,90,604	AY 2018-19
Cash expenditure through Basheer incurred towards Fire NOC	Rs.8,00,000	AY 2017-18
Cash expenditure from my account in the company	Rs.10,00,000	AY 2017-18
Cash expenditure from my account in the company	Rs.59,00,000	AY 2018-19
Total	Rs.3,86,21,204	

15.17 Further, statement recorded u/s 132(4) of the Act dated 5.9.2017 payment by cheque and cash and received by cheque and cash as follows:

Payment made to MKH Infrastructure in cash	Rs. 20030600/-	AY 2018-19
Cash payments received from customers	Rs. 10890604/-	AY 2018-19
Cash Expenditure through Basheer incurred towards fire NOC	Rs. 800000/-	AY 2017-18
Cash expenditure from my account in the company	Rs. 1000000/-	AY 2017-18
Cash expenditure from my account in the company	Rs. 5900000/-	AY 2018-19
Total	Rs. 38621204/-	

15.18 Later, in the statement recorded u/s 132(4) of the Act, investigating authority taken admission from the assessee to disclose as follows in respect of various assessees:

Sl. No	Person in whose hands the disclosure is made	Amount disclosure	A.Y
1	M.A Smart Developers Mangalore Pvt. Ltd	2200000	2017-18
		225000	2014-15
		2000000	2018-19
		5000000	2016-17
		68566300	A.y is to be worked out
		30000000	
2	Self(Mohammed Ibrahim Mohideen)	1000000	2017-18
		500000	2015-16
		1000000	2017-18
		1500000	2014-15
		400000	2013-14

3	Hindustan Infrastructure Developers	100000	2017-18
		800000	2014-15
4.	Emirates Hindustan Builders & Developers	10225000	2018-19
5	Tabesco Hindustan Infra Developers Pvt. Ltd	1800000	2017-18
		36821204	2018-19

Sl. No	Person in whose hands the disclosure is made	Estimated total income for the current F.Y ie F.Y 2017-18 (in Rs.)
1	M.A Smart Developers Mangalore Pvt. Ltd	15000000
2	Hindustan Promoters and Developers Pvt. Ltd	3000000
3	Metro plaza Project (Prop: Mohammed Ibrahim Mohideen)	2000000
4	Other Firms	1000000
	Total Estimated Income	20000000

15.19 Further, as discussed in earlier para the ld. AO made addition of Rs.8 lakhs expenditure incurred in cash which is based on the unsubstantiated seized material A/THI/8 and another addition of Rs.10 lakhs which is relating to the payment has been made by Mr. Basheer on behalf of assessee company. This total addition of Rs.28 lakhs made in the assessment year 2017-18 is based on statement recorded u/s 132(4) of the Act and unsubstantiated loose slips by choosing only the cash payments and ignoring the payment received by cash by the assessee, which

cannot be sustained. Accordingly, the addition made in the assessment year 2017-18 is deleted.

15.20 In the result, the appeal of the assessee in ITA No.167/Bang/2024 is partly allowed.

ITA No.168/Bang/2024 (AY 2018-19)

16. In this assessment year, assessee in ground Nos.6 to 11 challenged additions of Rs.3,58,14,436/- made by ld. AO on the basis of declaration made u/s 132(4) of the Act. Grounds Nos.1 to 5 not pressed before us and the same are dismissed as not pressed.

The above addition consists of following:

(i)	Unexplained investment for building construction u/s 69B of the Act r.w.s. 115BBE of the Act	1,90,30,600/-
(ii)	Unexplained expenditure u/s 69C r.w.s. 115BBE of the Act	59,00,000/-
(iii)	Unaccounted cash receipts	1,10,90,104/-
	Total	3,60,20,704/-

16.1 In this assessment year, first addition has been made at Rs.1,90,30,600/- for unaccounted investment in the construction, which is based on the seized material A/THI/8 page 7, which shows the payment to MKH Infrastructure.

16.2 As discussed in earlier para of this order in ITA No.167/Bang/2024 for assessment year 2017-18, this addition is deleted.

17. Next addition of Rs.59 lakhs as an unexplained expenditure u/s 69C of the Act. In page 24 to 26 of seized material marked as A/THI/8 found during the course of search action at the premises of the assessee shown the payment to MKH Infrastructure of Rs.59 lakhs. This also based on the statement recorded u/s 132(4) of the Act from Mr. Ibrahim, MD of the assessee and uncorroborated loose

slips. As discussed in earlier para of this order in ITA No.167/Bang/2024 for assessment year 2017-18, this addition is also deleted as it is based on statement recorded u/s 132(4) of the Act and unsubstantiated loose slips.

18. Next addition is Rs.1,10,90,104/- towards unaccounted cash receipts in respect of sale proceeds of shops and flats. According to the ld. AO, seized material pages 10, 20, 21 A/THI/8 shows the unaccounted receipt of the cash towards sale of the flats. Similarly, pages 8 to 19 AI/THI/8 there was mentioning of the receipt of black amount collected towards sale of the flats. There were also agreements entered by buyers pages 36 to 48 and 96 to 108 of seized material marked as A/THI/4, which is a copy of the agreement dated 2.8.2017 entered with Arun Kumar K.K. by Md. Ibrahim and Mr. Basheer on behalf of the present assessee. It was found by the ld. AO that there was a difference between the consideration shown in the agreement and the actual consideration on going through the seized material. This was questioned with Md. Ibrahim, M.D. who has admitted in his statement recorded u/s 132(4) of the Act on 31.8.2017 and statement recorded u/s 131 of the Act on 5.9.2017 that he had receipt of unaccounted cash to the tune of Rs.1,08,90,604/-. The same was brought into tax. Before us, ld. A.R. submitted that either investigating authorities or ld. AO carried on any full proof enquiry with the purchaser or with any parties regarding the admission of the unaccounted cash to the assessee. Admittedly, there was no prior enquiry at the end of the revenue authorities. They have gone on the basis of the uncorroborated seized material coupled with the statement recorded u/s 132(4) of the Act. As discussed in earlier part of this order, statement recorded u/s 132(4) of the Act, business cannot be

base for addition by taking the support of uncorroborated loose slips. There should be positive material to make an addition and the enquiry shall be full proof. The circular No.286/98/2013-IT (Investigation Section) dated 18.12.20214, which disentitled the revenue authorities to take confessional statement from the assessee.

18.1 Further, the ld. AO cannot solely rely on the statement recorded u/s 132(4) of the Act as recently held by Hon'ble Delhi High Court in the case of PCIT Vs. Pavitra Realcon Pvt. Ltd. reported in ITA No.579/2018 dated 29.5.2024, wherein held as under:

“17. We have heard the learned counsels appearing on behalf of the parties and perused the record.

18. The primary grievance which arises in the present appeals pertains to whether the ITAT was right in deleting additions made under Section 68 of the Act by holding that no assessment could have been made on mere presumption of existence of incriminating material.

19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.

20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.

*21. In the case of **Kailashben Manharlal Chokshi v. CIT**¹, the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative*

material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -

26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. **We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission.** We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary state ment, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retrac tion made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has com mitted an error in ignoring the retraction made by the assessee.

[Emphasis supplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of **CIT v. Harjeev Aggarwal²**, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:

-
“20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. **The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations.** However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. **However, such statements on a stand alone**

basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.

[Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of **CIT v. Sinhgad Technical Education Society**¹ and held as follows: -

“18. Further, while writing the order it has come to our notice that the Hon’ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the impugned assessment year.

19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And M/s Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned.”

25. Also, the Supreme Court in the case of **CIT v. Abhisar Buildwell (P) Ltd.**⁴, has clarified that in case no incriminating material is found during

the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -

“36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved.”

[Emphasis supplied]

26. *This Court in the case of CIT v. Kabul Chawla⁵, has explicitly noted that the information/material which has been relied upon for assessment has to relate with the assessee. The relevant portion of the said decision is extracted herein below: -*

(iv) Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this section only on the basis of the seized material."

[Emphasis supplied]

27. *Recently, this Court, in the case of Saksham Commodities Limited v. Income Tax Officer, Ward 22(1), Delhi & Anr⁶, while relying upon the decision of the Supreme Court in Abhisar Buildwell (supra) and this Court's decision in the case of CIT v. RRJ Securities Ltd.⁷, upheld the position of law that the AO would not be justified to assess income in case no incriminating material is found during the search. The relevant paragraph is reproduced herein below: -*

“54. In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme

Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C. Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C *ex abundanti cautela*. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated

56. We also bear in mind the pertinent observations made in *RRJ Securities* when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to “necessarily” be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. **This aspect was again emphasised in para 38 of RRJ Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforesaid judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY.”**

[Emphasis supplied]

28. So far as the submission made by the learned counsel for the Revenue that the AO acted on a bona fide belief that the date of search has to be taken as the date of initiation of proceedings under Section 153C of the Act is concerned, it is apposite to refer to our decision in the case of **CIT v. Ojjus Medicare (P) Ltd.**⁸ This Court, in the said case, reiterated the already settled law that the date of initiation of assessment proceedings under Section 153C would be calculated from the date of handing over of the books of accounts, documents or assets seized to the jurisdictional AO of the non-searched person. The relevant paragraphs of the said decision are extracted herein below: -

“K. SUMMARY OF CONCLUSIONS

119. We thus record our conclusions as follows:

A. Prior to the insertion of Sections 153A, 153B and 153C, an assessment in respect of search cases was regulated by Chapter XIVB of the Act, comprising of Sections 158B to 158BI and which embodied the concept of a block assessment. A block assessment in search cases undertaken in terms of the provisions placed in Chapter XIVB was ordained to be undertaken simultaneously and parallelly to a regular assessment.

Contrary to the scheme underlying Chapter XIVB, Sections 153A, 153B and 153C contemplate a merger of regular assessments with those that may be triggered by a search. On a search being undertaken in terms of Section 153A, the jurisdictional AO is enabled to initiate an assessment or reassessment, as the case may be, in respect of the six AYs' immediately preceding the AY relevant to the year of search as also in respect of the “relevant assessment year”, an expression which stands defined by Explanation 1 to Section 153A. Of equal significance is the introduction of the concept of abatement of all pending assessments as a consequence of which curtains come down on regular assessments.

B. Both Sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override Sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in Section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of “relevant assessment year” and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to

ten AYS'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant assessment year". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "likely to amount to" INR 50 lakhs or more in the "relevant assessment year" or in aggregate in the "relevant assessment years".

C. Section 153C, on the other hand, pertains to the non-searched entity and in respect of whom any material, books of accounts or documents may have been seized and were found to belong to or pertain to a person other than the searched person. As in the case of Section 153A, Section 153C was also to apply to all searches that may have been undertaken between the period 01 June 2003 to 31 March 2021. In terms of that provision, the AO stands similarly empowered to undertake and initiate an assessment in respect of a non-searched entity for the six AYS' as well as for "the relevant assessment year". The AYS', which would consequently be thrown open for assessment or reassessment under Section 153C follows lines pari materia with Section 153A.

D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

E. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."

[Emphasis supplied]

29. *It is thus seen that in order to determine block of six AYs, one must first identify the FY in which the search occurred, leading to the identification of the AY relevant to the previous year of the search. The block of six AYs will then be those immediately preceding the AY relevant to the search year. For a search assessment under Section 153C of the Act, the only difference is that the previous year of the search is replaced by the date or year in which the seized books of accounts, documents, and assets are handed over to the jurisdictional AO, rather than the year of the search, which is the basis for an assessment under Section 153A of the Act. Therefore, the relevant AY in the present case would come under the block of six AYs immediately preceding the AY in which the satisfaction note was recorded by the AO of the respondent-assessee companies.*

30. *Further, in the case of M/s Design Infracon Pvt. Ltd., the ITAT held that there is violation of principles of natural justice as neither the statement of owner of Jain group of companies was provided to the said company, nor*

the opportunity of cross-examination was given. The ITAT in paragraph no. 23 has held as under: -

“23.Now, coming to Design Infracon (P) Ltd., we find from the material available on record that there is brazen violation of principles of natural justice inasmuch as neither the statement of Mr. Jain recorded at the time of search nor his cross-examination was provided to the assessee by both the lower authorities despite specific and repeated requests made by the assessee in this regard. The Hon'ble Supreme Court in the case of M/s Andaman Timber Industries vs. CCE reported in 281 CTR 241 has held that not giving opportunity of cross-examination makes the entire proceedings invalid and nullity. The Co-ordinate Bench of the Tribunal in the case of Best City Infrastructure Ltd. (supra) has also held that not providing opportunity of cross-examination makes the addition invalid. It has come to our notice that the Hon'ble Delhi High Court recently has upheld the said decision as reported in 397 ITR 82.”

31. On this aspect, it is beneficial to refer to the decision of the Supreme Court in the case of **Andaman Timber Industries v. CCE**⁹, wherein, it was held that not providing the opportunity of cross-examination to the assessee amounts to gross violation of the principles of natural justice and the same will render the order passed null and void. The relevant paragraph of the said decision is extracted herein below: -

“6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea

is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exfactory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to crossexamine those dealers and what extraction the appellant wanted from them.”

[Emphasis supplied]

32. Additionally, the Supreme Court in the case of **State of Kerala v. K.T. Shaduli Grocery Dealer**², held that tax authorities being quasi- judicial authorities are bound by the principles of natural justice. The relevant paragraph is extracted herein below: -

“2. Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by this Court in *Dhakeswari Cotton Mills Ltd. v. CIT* [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer “is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law”, but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in *Suresh Koshy George v. University of Kerala* [AIR 1969 SC 198 : (1969) 1 SCR 317 : (1969) 1 SCJ 543] that “the rules of natural justice are not embodied rules” and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in *Russel v. Duke of Norfolk* [(1949) 1 All ER 109] : “There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which

have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.”

[Emphasis supplied]

33. *Further, the argument of learned counsel for the Revenue that this mistake is curable under Section 292B of the Act lacks merit as the plain language of the said Section makes it abundantly clear that this provision condones the invalidity which may arise merely by mistake, defect or omission in notice. The said Section reads as under: -*

292-B. Return of income, etc., not to be invalid on certain grounds.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

34. *Reliance can also be placed upon the decision in the case of **CIT v. Micron Steels P. Ltd.**¹¹, whereby, it was held that the jurisdictional defects cannot be cured under Section 292B of the Act and they render the entire proceedings null and void.*

35. *In the present case, it is seen that the Revenue has failed to allude to any steps which were taken to determine that the seized material belonged to the respondent-assessee group. Notably, the satisfaction note has also been prepared in a mechanical format and it does not provide any details about the incriminating material. Therefore, a failure on the part of the Revenue to manifest as to how the material gathered from the search of Jain group of companies belonged to the respondent-assessee group and the same is incriminating, vitiates the entire assessment proceedings.*

36. *Accordingly, we find no reason to intermeddle with the order of the ITAT which has rightly set aside the assessment order and deleted the additions made therein.*

37. *In view of the aforesaid and on the basis of the findings of fact arrived at before the authority, these appeals do not raise any substantial*

question of law and consequently, they stand dismissed. Pending applications, if any, are also disposed of.”

18.2 The ratio that emerges from the aforesaid decisions is that a sworn statement cannot be relied upon for making any addition and must be corroborated by independent evidence for the purposes of making assessments.

18.3 In view of the above discussion, we are of the opinion that addition cannot be made on the basis of statement recorded u/s 132(4) of the Act supported by the unsubstantiated loose slips. Accordingly, the addition is deleted though we are not agreed with the order of the Id. CIT(A) on deletion of addition. Accordingly, the addition is deleted.

18.4 In the result, appeal of the assessee in ITA No.168/Bang/2024 is partly allowed.

ITA Nos.174 & 175/Bang/2024 for the AYs 2017-18 & 2018-19 MKH Infrastructure:

19. In these appeals, the assessee not pressed ground nos.1 & 2. Accordingly, these grounds are dismissed as not pressed.

20. Next issue for our consideration is ground nos.3 to 8 wherein assessee challenged the addition of Rs.10 lakhs made for the assessment year 2017-18 & Rs.2,07,80,040/- in assessment year 2018-19 on the basis of statement recorded u/s 132(4) of the Act.

21. Facts of the case are that the assessee is a partnership firm, in which Mr. Ibrahim Kaleel and Mr. Ibrahim B.A. are the partners of the firm. A search and seizure operation u/s 132 was conducted in the case of Mr. Mohammed Ibrahim and Mr. Ibrahim Kaleel. M/S Tabasco Hindustan Infra Developers Pvt. Ltd. is engaged in developing the residential-cum-commercial complex project, "Tabasco Inn" at Kanhangad in a land owned by the said company,

which was purchased in F.Y. 2014-15. Mr. Mohammed Ibrahim M is the Managing Director of the company and Mr. Basheer Malikayil is one of the directors.

21.1 Mr. Ibrahim Kaleel, the Managing partner of M/s MKH Infrastructure has a very long-standing association with Mr. Mohammed Ibrahim, the MD of M/S Tabasco Hindustan Infra Developers Pvt. Ltd. The construction contract of the residential-cum-commercial project, "Tabasco Inn", was given to M/S MKH Infrastructure. Initially, the construction contract agreement between M/S MKH Infrastructure and M/S Tabasco Hindustan Infra Dev. Pvt. Ltd. was executed on 16th Nov, 2016 to construct the structural part of the Residential cum Commercial project 'Tabasco Inn' for a total cost of Rs. 41,88,34,000/-. However, later on, this contract agreement was cancelled by both the parties and an item-wise approach was agreed upon.

21.2 During the course of search at the residences of Mr. Mohammed Ibrahim, Mr. Ibrahim Khaleel, etc., documents belonging to the assessee have been seized. During the course of survey at the business premises of M/S Tabasco Hindustan Infra Developers Pvt. Ltd., the evidences regarding payments in cash and cheque made to the assessee were found and impounded. Sworn statements were recorded from Mr. Ibrahim Kaleel and Mr. Mohammed Ibrahim on various dates, who admitted to the contract receipts in cash and cheque as detailed in the seized materials.

21.3 As regards the argument of the assessee that the construction agreement was cancelled is concerned, the director of the assessee Mr. Ibrahim Kaleel stated in his statement of oath u/s 132(4) as under:

“Q. 35. Please explain your involvement in the Partnership Firm MKH Infrastructure. Please give details about the partners in MKH Infrastructure.

Ans: MKH Infrastructure was formed in 2014 as a partnership between Mr. B. Ibrahim and myself, Ibrahim Khaleel, Mr. B.A Ibrahim is a grocery shop owner and has been a good friend of mine for quite a few years. Under this partnership. we had taken up a construction agreement with Tabasco Hindustan Infra Dev. Pvt. Ltd.

Q. 36. Please explain your relationship with Tabasco Hindustan Pvt. Ltd. Explain in detail the business involvement in the same.

Ans: Tabasco Hindustan Infra Dev. Pvt. Ltd. was formed by Mr. Mohammed Ibrahim and Mr. Basheer. Considering the close relationship, I had with Mr. Mohammed Ibrahim, they had handled over the construction contract to MKH Infrastructure according to the Agreement between the two on 16th November, 2016 for a total cost of Rs.41,88,34,000/-. However, this has been nullified by both parties as an item wise approach was proposed. The contract was to construct the structural part of the Residential cum Commercial project Tabasco Inn.”

21.4 In these cases, the addition is made towards receipt of cash of Rs.10 lakhs in AY 2017-18 and Rs.1,90,30,600/- from M/s. Tabesco Hindustan Infra Developers Pvt. Ltd. Since we have already considered the statement recorded u/s 132(4) of the Act in the case of Tabesco Hindusthan Infra Developers Pvt. Ltd. in ITA No.167 & 168/Bang/2024, for the assessment years 2017-18 & 2018-19 and observed that addition cannot be made only on the basis of statement recorded u/s 132(4) of the Act with the uncorroborated loose slips and the addition was deleted therein in earlier part of this order. Applying the same ratio, we incline to delete these additions in these assessment years also as the material considered by the Id. AO in this case is also same. Accordingly, the addition is deleted.

22. In the result, appeals of the assessee in ITA Nos.174 & 175/Bang/2024 are partly allowed.

Order pronounced in the open court on 8th July, 2024

**Sd/-
(Keshav Dubey)
Judicial Member**

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

Bangalore,
Dated 8th July, 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.**