IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

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

ITA No.463 to 466, 485 & 486/Bang/2024
Assessment Years: 2014-15 to 2017-18, 2013-14 & 2018-19 respectively

Mohammed Ibrahim Mohideen 11/21, Baithul Salamath B.T. Road Uppala Gate, Uppala Kasarod Kerala 671 322 **PAN NO : AAQPI5719Q**	**Vs.**	ACIT Central Circle-2 Mangalore Karnataka
APPELLANT		**RESPONDENT**

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Shri D.K. Mishra, D.R.

Date of Hearing	:	29.05.2024
Date of Pronouncement	:	08.07.2024

O R D E R

PER BENCH:

These appeals by assessee are directed against common order of CIT(A) for the assessment years 2013-14 to 2018-19 dated 18.12.2023. Since these appeals are related to a single assessee emanated from the common order of CIT(A), these appeals are clubbed together, heard together, and disposed of by this common order for the sake of convenience. The grounds of appeal raised by the assessee as follows:

ITA 485 of 2024 (2013-14)

1. *The learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 84,00,000/- purely on assumptions and presumptions based on the loose sheet found at the time of search.*

3. *The learned CIT(A), has overlooked the facts that, no additions/disallowances u/s 153A can be made for the assessment year under questions, without the corroborative evidence unearthed and the original assessment has not abated as on the date of search.*
4. *The learned CIT(A), has erred in not considering the decision, which are squarely applicable to the appellant's case, i) CIT vs. Lancy constructions (237 taxmann 728) (kar), ii) CIT (central) III vs. Kabul Chawla (234 taxmann 300) (Delhi), iii) Canara Housing Development co. vs. DCIT, CC1(1), Bangalore (49 taxmqaann.com 98) (kar)*
5. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.*

ITA 463/Bang/2024 (2014-15)

1. *The learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 22,00,000/- purely on assumptions and presumptions based on the loose sheet found at the time of search.*
3. *The learned CIT(A), has overlooked the facts that, no additions/disallowances u/s 153A can be made for the assessment year under questions, without the corroborative evidence unearthed and the original assessment has not abated as on the date of search.*
4. *The learned CIT(A), has erred in not considering the decision, which are squarely applicable to the appellant's case, i) CIT vs. Lancy constructions (237 taxmann 728) (kar), ii) CIT (central) III vs. Kabul Chawla (234 taxmann 300) (Delhi), iii) Canara Housing Development co. vs. DCIT, CC1(1), Bangalore (49 taxmqaann.com 98) (kar)*
5. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed*

ITA 464/Bang/2024 (2014-15)

1. *The learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 55,00,000/- purely on assumptions and presumptions based on the loose sheet found at the time of search.*
3. *The learned CIT(A), has overlooked the facts that, no additions/disallowances u/s 153A can be made for the assessment year under questions, without the corroborative evidence unearthed and the original assessment has not abated as on the date of search.*
4. *The learned CIT(A), has erred in not considering the decision, which are squarely applicable to the appellant's case, i) CIT vs. Lancy constructions (237 taxmann 728) (kar), ii) CIT (central) III vs. Kabul*

Chawla (234 taxmann 300) (Delhi), iii) Canara Housing Development co. vs. DCIT, CC1(1), Bangalore (49 taxmqaann.com 98) (kar)

5. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed*

ITA 465/Bang/2024 (2014-15)

1. *The learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 29,50,000/- purely on assumptions and presumptions based on the loose sheet found at the time of search.*
3. *The learned CIT(A), ought to have appreciated that an addition cannot be made on the basis of suspicion and guesswork and without bringing corroborative material on record.*
4. *The learned CIT(A), has erred in making an addition against the appellant on the basis of a piece of paper found during the course of search wherein certain figures were written*
5. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed*

ITA 486/Bang/2024 (2014-15)

1. *The learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in concluding assessment under section 144 of the Income Tax Act, 1961 by order 27.12.2019, when the assessment is not time barred.*
3. *The learned CIT(A), is not justified in law in making additions amounting to Rs.9,63,350/- as undisclosed business income purely on assumptions and presumptions based on the loose sheets found at the time of search by an ex-parte order u/s 144.*
4. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 85,00,000/- purely on assumptions and presumptions based on the loose sheet found at the time of search.*
5. *The learned CIT(A), ought to have appreciated that an addition cannot be made on the basis of suspicion and guesswork and without bringing corroborative material on record.*
6. *The learned CIT(A), has erred in making an addition against the appellant on the basis of a piece of paper found during the course of search wherein certain figures were written*
7. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
8. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed*

ITA 466 grounds: (2017-18)

1. *The Learned CIT(A), erred in passing the order in the manner he did.*
2. *The learned CIT(A), is not justified in law in making additions aggregating to Rs. 19,63,350/- under the head of income from business and Rs.10,00,000/- as income from other sources, purely on assumptions and presumptions based on the loose sheet founds at the time of search by an ex-parte order u/s 144 r.w.s. 153A.*
3. *The learned CIT(A), is not justified in law in making additions u/s 69B amounting to Rs. 2,41,47,000/- purely on assumptions and presumptions based on the loose sheet founds at the time of search by an ex-parte order u/s 144 r.w.S. 153A.*
4. *The learned CIT(A), ought to have appreciated that an addition cannot be made on the basis o suspicion and guesswork and without bringing corroborative material on record.*
5. *The learned CIT(A), has erred by making an addition against the appellant on the basis of a piece of paper found during the course of search wherein certain figures were written.*
6. *Without prejudice, the impugned additions are excessively arbitrary and unreasonable and liable to be deleted in full.*
7. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.*

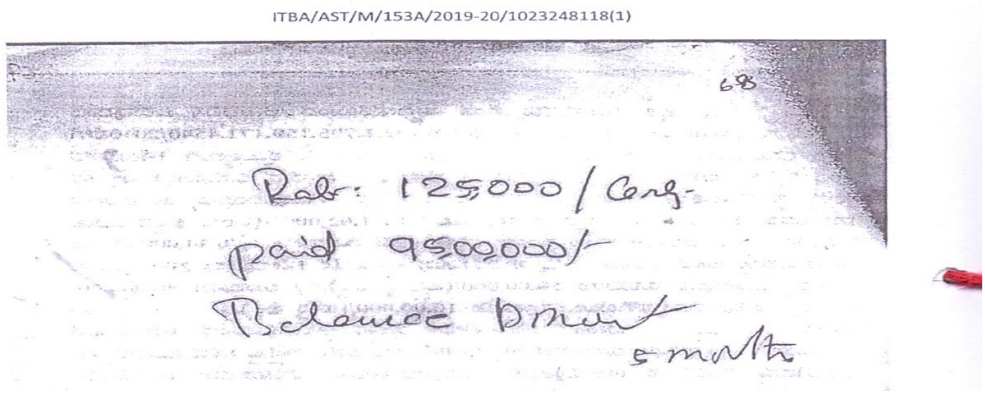
2. Facts of the case are that the assessee is engaged in Real Estate business and properly developer. A search and seizure action was carried out u/s 132 of the Income Tax Act, 1961 (in short "The Act") in case of Mohammed Ibrahim Mohideen, the present assessee on 20.8.2017. Simultaneously, a survey u/s 133A of the Act was conducted in the case of assessee at its business premises. During the search/survey proceedings, various incriminating material said to be found during the course of search. A notice u/s 153A of the Act was issued to the assessee on 6.3.2019 to file a return of income. The assessee has filed the return of income on 30.3.2019 and assessment was completed u/s 153A r.w.s. 144 of the Act on 27.12.2019. Against this assessee went in appeal before ld. CIT9A) who has dismissed the appeal of the assessee. Once again assessee is in appeal before us. Now we will deal with each assessment year-wise.

ITA No.485/Bang/2024 AY 2013-14:

3. First ground for our consideration is that no addition could be made in the assessment year under consideration without any corroborative evidence unearthed as the original assessment has been concluded on the date of search on 30.8.2017. The ld. A.R. submitted that this is the assessment year 2013-14 on the date of search, the time limit to issue a notice u/s 143(2) of the Act has been already lapsed as such for the assessment year 2013-14, the assessee has already filed return of income on 30.3.2015. The said return was already been processed u/s 143(1) of the Act. Later, the assessment was completed u/s 143(3) of the Act on 30.3.2016. A search action was conducted in the case of assessee on 30.8.2017 and thereafter to frame the assessment u/s 153A of the Act, there should be seized material relating to the assessment year 2013-14. According to the ld. A.R., there was no seized material relating to the assessment year under consideration and there was an addition for this assessment year as follows:

a)	Unexplained investment u/s 69B	-	Rs.80 lakhs
b)	Unexplained investment u/s 69B	-	Rs.4 lakhs
	Total	-	Rs.84 lakhs.

3.1 According to the ld. A.R, these additions are based on loose slips and not on any supporting documents. She submitted that the said loose slips reads as follows:



3.2 The ld. A.R. submitted that basis of above loose slips, the ld. AO interpreted that there was a payment of Rs.95 lakhs to vendor Praphul Shetty as against the disclosure of Rs.15 lakhs paid by assessee by cheque in the balance sheet towards this transaction entered by assessee with Praphula Shetty to purchase land at Manjeswara, the jolting in the last page of the agreement that at Rs.95 lakhs cannot be interpreted that there was a payment of Rs.95 lakhs to Praphulla Shetty. This is uncorroborated evidence, which cannot be relied upon. Further, he has submitted that there was an addition of another Rs.4 lakhs in the assessment year under consideration u/s 69B of the Act. Further, ld. A.R. submitted that another addition of Rs.4 lakhs based on the seized material A/MI/4 page 1 to 24 this is a Joint Development agreement for sharing of shops/apartments entered on 26.11.2012 between K.L. Chayaba and Mohammed Ali. As per the agreement, seized, Mohammed Ibrahim Mohideen, Chairman, the present assessee paid Rs.4 lakhs in cash as refundable deposit and he has admitted this in the statement recorded u/s 132(4) of the Act on 31.8.2017.

4. We have heard the rival submissions and perused the materials available on record. In this case, addition based on the basis of statement recorded u/s 132(4) of the Act supported by unsubstantiated loose slips bearing No.A/IK/3 at pages 67 to 70 and for payment of Rs.80 lakhs bearing No.A/MI/4 pages 1 to 24 for addition of Rs.4 lakhs totaling of Rs.84 lakhs. Now the contention of the ld. A.R. is that there was no assessment pending for the assessment year under consideration as on the date of search on 30.8.2017. The assessment of assessee was already completed u/s 143(3) of the Act vide order dated 31.3.2016 to reopen the assessment there should be a valid search material and without valid seized material, assessment cannot be reopened. However, we find that at the time of issuing of notice for reopening u/s 153A of the Act to concluded assessment there should be a

prima facie material to do so. In the present case, there is a seized material marked as A/IK/3 at pages 67 to 70 and A/MI/4 pages 1 to 24, A/IK/3 pages 67 to 70 represent an agreement by assessee Smt. Praphulla Shetty for purchase of Rs.1.67 acres of land at Manjeshwara for a total consideration of Rs.1,70,34,000/-. This agreement was duly signed by both the parties. As such, he has paid Rs.40 lakhs in cash and Rs.10 lakhs by cheque. According to the ld. AO, this agreement was subsequently changed and revised, which is seized document A/IK/71 & 72. As per revised agreement, the sale consideration was Rs.2,08,75,000/-. According to the ld.AO, out of this assessee paid Rs.95 lakhs, which was reproduced in earlier para. On this count, ld. AO made addition of Rs.80 lakhs which on the basis of another agreement A/M14/pages 1 to 24. On questioning the same recorded u/s 132(4) of the Act on 31.8.2017 assessee admitted payment of Rs.4 lakhs in cash. On this basis, the ld. AO issued notice u/s 153A of the Act. In our opinion, for issuing the notice u/s 153A of the Act, this seized material is sufficient. However, for making addition u/s 69B of the Act at Rs.84 lakhs, there should be corroborative and conclusive evidence to support this addition. The first addition of Rs.80 lakhs (Total Rs.95 lakhs in cash (-) Cheque payment of Rs.15 lakhs = Rs.80 lakhs) which is based on the rough notings at back side of the sale agreement, which is a loose slip and cannot be speak itself as it is totally uncorroborated.

4.1 The said loose sheets extracted herein above in earlier para 3.1 of this order which contains no details about the unaccounted transaction made by the assessee and any proof of such alleged transactions carried on by the assessee. There is no information regarding details of such unaccounted transactions. How one can presume that the assessee carried unaccounted transaction on the basis of the above scribblings. The ld. AO's conclusion does not emerge from the perusal of the said loose sheets. The observations

of the AO are perverse and devoid of merits. There is nothing in these loose slips which would enable a person to arrive at unaccounted income of the assessee. A perusal of the said loose slips would show that there are some rough notings. They contain certain figures mentioned as estimates. Nothing can be made out as to what, those entries are all about. These loose slips do not even contain any details or name of the parties to whom the payments were made. The investigating team also not collected any details of the parties involved therein, so as to make payments and receipts of cash or cheque corresponding to these transactions. These loose slips cannot be incriminating material or evidence to support the contention of the AO that there were unaccounted transactions carried on by the assessee. This is a mere case of guess work of investigating team as well as assessing officer as there is no concrete evidence to-prove such unaccounted transactions. The AO has hastily presumed that these loose slips contain details of unaccounted sales and purchases by extracting answer to question No.16 & 17 vide statement recorded u/s 132(4) of the Act. In our opinion, the additions were made as per AO's discretion and arrived at an imaginary amount by treating the unaccounted transactions. This addition has no legs to stand alone as such it was not based on any corroborative material other than statement recorded u/s 132(4) of the Act.

4.2 The ld. AO has merely relied upon the loose papers, obscure notings made in certain note books, statement of Mr. R. Ravish and has come to the above conclusion. The conclusions drawn by him are not forthcoming from the documents and statements. The AO has made his own analysis below each extract of the seized material. The analysis is not supported by any corroborative evidence.

4.3 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.

4.4 In the case of CIT v. M/S Khosla Ice & General Mills 2013 (1) TMI 451 - Punjab & Haryana High Court, the Hon'ble Court held that assessee rightly contended that the impugned document was a non-speaking document in as much as it does not contain any intelligible narration in support of the inference drawn by the Assessing Officer that it reflected unaccounted transactions carried out by the assessee outside the regular books of account. When a dumb document, is to be made the basis to fasten tax liability on the assessee, the burden is on the AO to establish with corroborative evidence that the nature of entries contained therein reflect income and also that such income was in the control of the assessee. Thus, AO has to establish, with necessary corroborative evidence, that various entries contained in the seized document reflect unaccounted transactions effected by the assessee. Considering the entirety of circumstances, in the absence of any material to support the nature and ownership of the entries found in the seized document, no addition is permissible in the hands of the assessee as undisclosed income by merely arithmetically totaling various figures jotted down on such document.

4.5 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.

4.6 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 provision 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.

4.7 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.

4.8 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 negativing 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.

4.9 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 rot 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.

4.10 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,

4.11 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 u>as 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)"

4.12 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.

4.13 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]"

4.14 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."

4.15. The Hon'ble Calcutta High Court in the case of CIT v. Eastern Commercial Enterprises, 210 ITR 103 (Cal) held as follows:

"8. We have considered the contesting contentions of the parties. It is true that Shri Sukla has proved to be a shifty person as a witness. At the earlier stages, he claimed all his sales to be genuine but before the Assessing Officer in the case of the assessee, he disowned the sales specifically made to the assessee. This statement can at the worst show that Shri Sukla is not a trustworthy witness and little value can be attached to what he stated either in his affidavits or in his examination by the Assessing Officer. His conduct neutralises his value as a witness. A man indulging in double-speaking cannot be said by any means a truthful man at any stage and no court can decide on which occasion he was truthful. If Shri Sukla is neutralised as a witness what remains is the accounts, vouchers, challans, bank accounts, etc. But we would observe here that which way lies the truth in Shri Sukla's depositions, could have been revealed only if he was subjected to a cross-examination by the assessee. As a matter of fact, the right to cross-examine a witness adverse to the assessee is an indispensable right and the opportunity of such cross- examination is one of the corner-stones of natural justice. Here Shri Sukla is the witness of the Department. Therefore, the Department cannot cut short the process of taking oral evidence by merely having the examination-in-chief. It is the necessary requirement of the process of taking evidence that the examination-in-chief is followed by cross-examination and re-examination, if necessary.

9. It is not just a question of form or a question of giving an adverse party its privilege but a necessity of the process of testing the truth of oral evidence of a witness. Without the truth being tested no oral evidence can be admissible evidence and could not form the basis of any inference against the adverse parties. We have also examined the records and we find that this Shri Sukla was examined by a number of officers. The Assistant Director of Investigation examined him on August 4, 1987, and in reply to question No. 2 in that deposition he confirmed that he was a dealer in lubricating oil since 1977. In reply to question No. 3, he confirmed having been assessed to income-tax. Again, in reply to question No. 4, he explained that he used to purchase lubricating oil from different garages as well as through various brokers. Such lubricating oil was processed by him in his factory for sale. All payments were received by him through account payee cheques. In reply to question No. 5, he stated that he had seven full-time employees whose names are mentioned by him. He also claimed to have maintained books of account like sales books, purchase books, cash books and sale bills. In reply to question No. 18, he, on his own, stated that his big customers were the Reliance Oil Mills and Eastern Commercial Enterprises, the assessee, in the present reference. As for his cash withdrawals, he explained that his business required

ready cash for purchase of raw materials which explained his large drawings of cash from the bank. Learned counsel then cited a host of decisions to bring home the point that no evidence or document can be relied upon unless it is shown to the assessee.

Similarly, the requirement of cross-examination as the requirement of the rules of natural justice has been underlined by the Bombay High Court in Vasanji Ghela and Co. v. CST [1977] 40 STC 544. It is trite law that cross-examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against a party unless the party is put on notice of the case made out against him. He must be supplied the contents of all such evidence, both oral and documentary, so that he can prepare to meet the case against him. This necessarily also postulates that he should cross-examine the witness hostile to him.

10. In any case, we have nothing to rely upon to come to a decision this way or the other. The first thing is that which of the statements of Shri Sukla is correct, is anybody's guess. Therefore, it is necessary to delve out the truth from him and for that matter a cross-examination is necessary. Secondly, if the statement of Shri Sukla as a witness against the adverse party, the assessee, is relied upon as truthful, still remains the question of estimation of the profit. The assessee no doubt has given a comparative instance of gross profit rate but it is also necessary for the Department to come to a finding as to the norm of the gross profit on the basis of comparative cases. Therefore, it is the duty of the Assessing Officer to counter the comparative statement cited by the assessee before he can have the option to estimate the gross profit. Again, it is the comparative instance that alone can be the foundation of such estimate in case the accounts are really found to be unreliable and requiring to be rejected. Therefore, in the interest of justice for both the parties, the assessee and the Revenue, it is necessary for us to direct the Tribunal to remand the case to the Assessing Officer for reconsidering the whole matter in the light of the observations made by us in the foregoing and redo the assessment accordingly. All opportunities should be given to the assessee in order to lead any evidence that the assessee may feel necessary to rebut the case against him. As a result, we decline to answer the question."

4.16 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.

4.17. The unsubstantiated and uncorroborated seized material alone cannot be considered as conclusive evidence to frame these assessments. The words "may be presumed" in section 132(4) of the Act given an option to the AO concerned to presume these things, but it is rebuttable and it does not give a definite authority and

conclusive evidence. The assessee is having every right to rebut the same. The entire case depends upon the rule of evidence. There is no conclusive presumption with regard to unsubstantiated seized material to come to the conclusion that assessee has unaccounted transactions. In the present case, the assessee categorically denied unaccounted transactions. The AO cannot draw inference on the basis of suspicion, conjectures and surmises. Suspicion, however strong, cannot take place the material in place of evidence brought on record. The AO should act in a judicial manner, proceed in a judicial spirit and come to the judicial conclusions. The AO is required to act fairly as a reasonable person, not arbitrarily and capriciously. The assessment u/s153C of the Act should have been supported by adequate material and it should stand on its own leg. This notebook or loose sheets found during the course of search is only circumstantial evidence and not full proof evidence to sustain the addition. No addition can be made in the absence of any corroborative material. If it is circumstantial evidence in the form of loose sheets and notebook, it is not sufficient to come to the conclusion that there is conclusive evidence to hold that assessee has any unaccounted transactions. The notes in the diary/loose sheets are required to be supported by corroborative material. Since there was no examination or cross-examination of persons concerned, the entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search cannot be sustained. The evidence on record is not sufficient to uphold the stand of AO that assessee has unaccounted transactions.

4.18. 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.

4.19 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)

4.20 Thus, 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.

4.21 Further, 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 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 Assessees 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 Assessees 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."

4.22 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.

4.23 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 assessees 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.

……

……

4.24 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] .....

4.25 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.

4.26 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."

4.27 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:

- 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."

- In Dr. E.G. Memorial Trust v. CIT (Exemption), Kolkata2017 (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 Ld, 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."

4.28 We further rely in the case 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."*

4.29 We also rely on the decision of the Hon'ble Tribunal 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."

4.30 We rely on the judgement of the Hon'ble Gujarat High Court in the case of Kailashben Manharlal Chokshi v. Commissioner of Income-tax [2008] 174 Taxman 466 (Gujarat) 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."

4.31 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)

4.32 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)

4.33 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".

4.34 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. 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.

4.35 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 Aggarwal***[2]*, 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 Chawla**[5], 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 & Anr**[6], 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 aforenoted 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.

E. *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.*

F. *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 Indusgies 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."

4.36 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.

4.37 With regard to balance addition of Rs.4 lakhs, the contention of the ld. D.R. is that this is based on the statement recorded u/s 132(4) of the Act and also evidence inventorized as A/MI/4 page no.1 to 24 which has been seized at the premises of the assessee. It is an agreement for Joint Development Agreement and sharing of shops/apartments entered into on 26.11.2012 between Mr. K.L. Chayabba and Mr. Mohammed Ali in one part as owner of the land and Mr. Mohammed Ibrahim, the present assessee in his individual capacity as a developer of the property for constructing the residential cum commercial project "Rose Garden" with a super built up area of 39,816 sq.ft. at Deralakatte, Mangalore. As per this agreement, the assessee paid a sum of Rs.10 lakhs refundable security deposit, out of which sum of Rs.4 lakhs was by cash. This was admitted by the assessee in section 132(4) statement recorded on 31.8.2017 and also on 30.10.2017. Further, it was admitted by assessee in sworn statement recorded u/s 131 of the Act on 5.9.2017 but however, the assessee was not adhered to his statement while filing return of income.

4.36 In our opinion, as discussed in earlier para, this addition is based on only unsubstantiated statement recorded u/s 132(4) of the Act and 131 of the Act without any supporting evidence as discussed in earlier paras.

4.38 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 of Rs.84 lakhs is deleted.

5. In the result, appeal of the assessee in 485/Bang/2024 is allowed.

ITA 463/Bang/2024 AY 2014-15

6. In this case, the assessee filed original return on 31.3.2016 and return was processed u/s 143(1) of the Act. Later consequent to search action notice u/s 153A of the Act was issued. The assessee filed return of income on 6.3.2019 declaring income of Rs.6,06,430/-. While framing assessment u/s 144 of the Act, the ld. AO made addition as follows:

a) Payment by cash - Rs.10 lakhs
b) Payment by self-cheque - Rs.12 lakhs
Total unexplained investment u/s 69B - Rs.22 lakhs

6.1 The contention of the ld. A.R. is that the seized material relied by the AO vide A/IK/7 pages 145 & 147 were the same seized material which were relied by ld. AO while making addition for assessment years 2014-15 to 2018-19 in the case of Emkay Hindusthan Infrastructure and that assessee came in appeal before this Tribunal in ITA Nos.979 to 983/Bang/2022, the Tribunal vide order dated 16.6.2023 held as under and deleted the addition:

"3. We have heard the rival submissions and perused the materials available on record including various case laws cited by both the parties. In this case addition was made by AO towards cash received outside books of accounts in these assessment years as follows:

Asst. Year	*2014-15*	*2015-16*	*2016-17*	*2017-18*	*2018-19*
Amount	*41,00,000*	*1,04,05,000*	*2,49,50,000*	*98,50,000*	*0*

This is solely on the basis of scribblings in the loose slips found during the course of search action u/s 132 of the Act carried out in the case of assessee's partner namely Md. Ibrahim Khaleel and others and on the basis of survey, which has been conducted at the business premises of various entities including that of M/s. Emkay Hindustan Infrastructure. One of such seized material marked as A/IK/07 pages 145 to 150, which reads as follows:

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

(177)

Statement of Accounts. Site : Creek Galaxy , Pumpwell 18-07-2017

SLNo	Date	Bill No	Description	Amount	Amount
1			Balance	163,843,200.00	140,757,300.00
2			Tax 99777000 x 9%	8,979,930.00	8,979,930.00
3			Old Extra bill approved	6,728,000.00	6,728,000.00
4			Old Extra bill approved	2,150,000.00	2,150,000.00
5			Basement bill approved	2,600,000.00	2,600,000.00
6			Terrace Floor Bill Approved	3,950,000.00	3,950,000.00
7	17.04.2017	LR. 01	Man power supplied to client	220,972.00	220,972.00
8	29.04.2017		Meterial supplied to client	34,000.00	34,000.00
9	30.03.2017	LB. 01	Light weight Block	804,602.00	804,602.00
10	10.07.2017	LB. 02	Light weight Block	194,862.00	194,862.00
11			Extra	4,551,200.00	3,909,925.00
12	15.07.2017	CMT. 01	Cement	813,616.00	
13	15.07.2017	SND 01	Sand	300,164.00	300,164.00
			Total	195,170,546.00	170,629,755.00
Less					
			99,777,000+49,305,000	149082000.00	149082000.00
			Last payment	13545475.00	13545475.00
			Balance	32,543,071.00	8,002,280.00

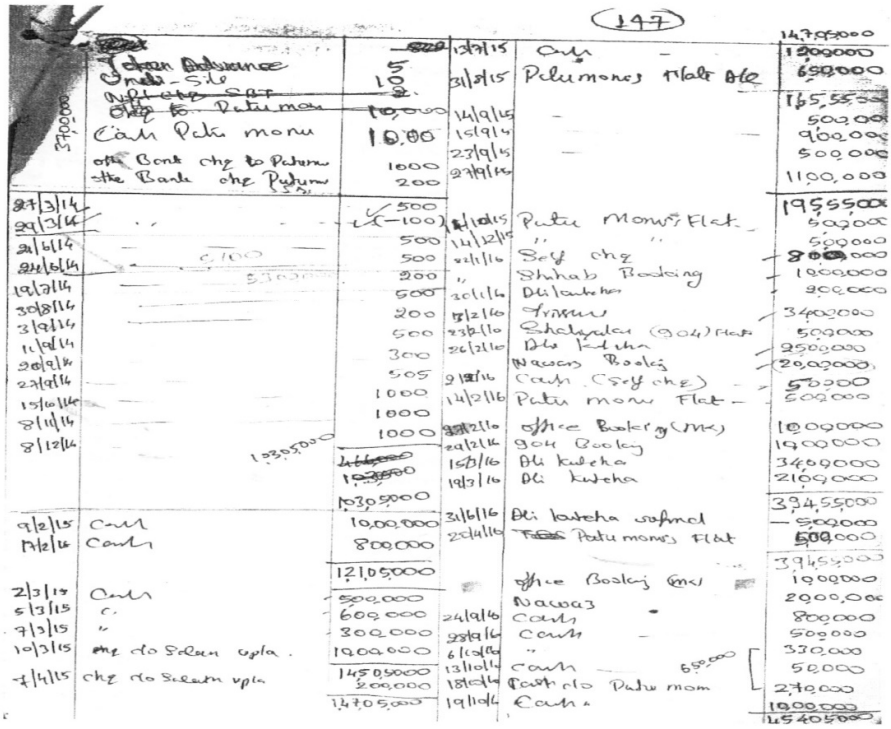
1 Agreement for office
2 Agreement for 3 office and 1 flat
3 Basement work,+ lift used +conmpound wall steel and shuttering +channel for all lift,
4 basement labour work

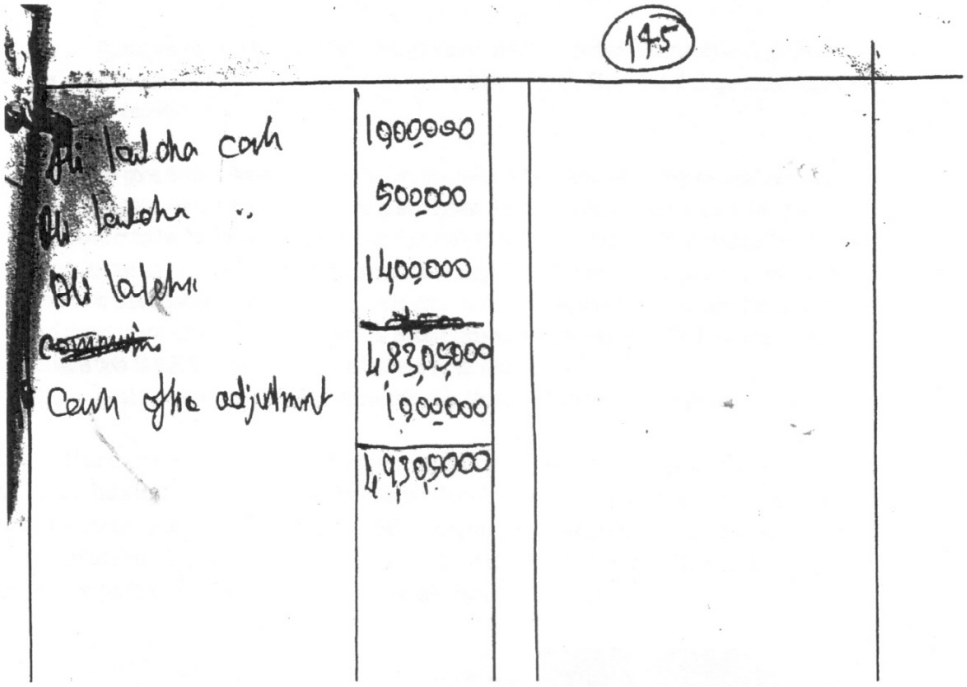
For Emkay Hindustan Infrastructure

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

(147)





3.1 On the basis of this seized material, statement was recorded from Mr. Ibrahim Khaleel on 3.1.2017. The relevant question and answer recorded in the sworn statement is briefly stated as follows:-

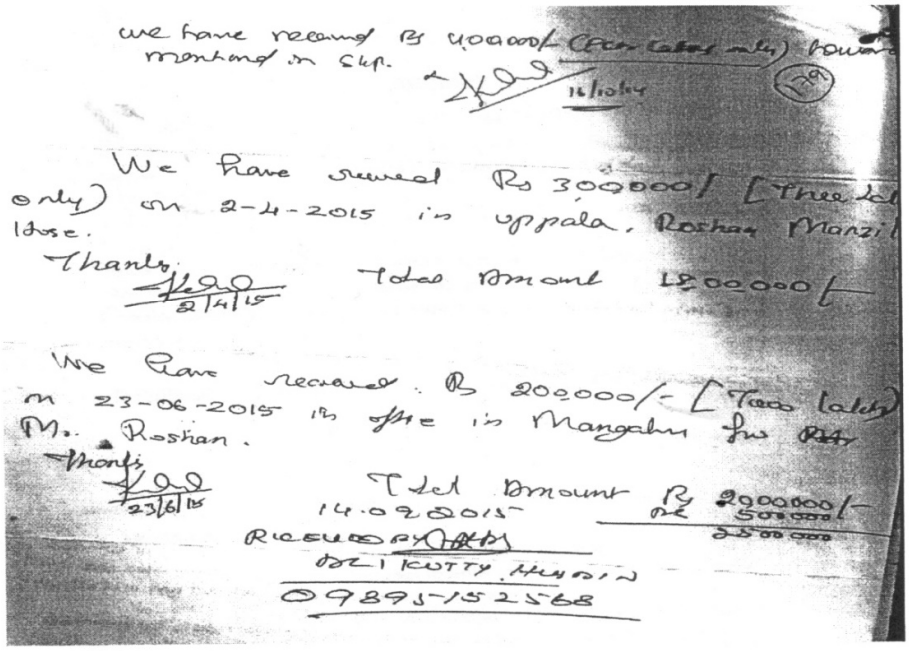
8.5 As already stated, it is seen that Mr. Ibrahim Khaleel has been marketing the flats and collecting the consideration from the clients with the consent of Mr. Alikutty. In such cases, Mr. Kaleel had directly received the amount from the customers as evident from the seized record: page no 178 to 182 of Annexure' A/IK/07'. As Mr. . Ali Kutty is an NRI, who lives most of the time abroad, Mr. . Khaleel received the amount on his behalf. The extract of the statement of Mr. . Ibrahim Khaleel is produced below

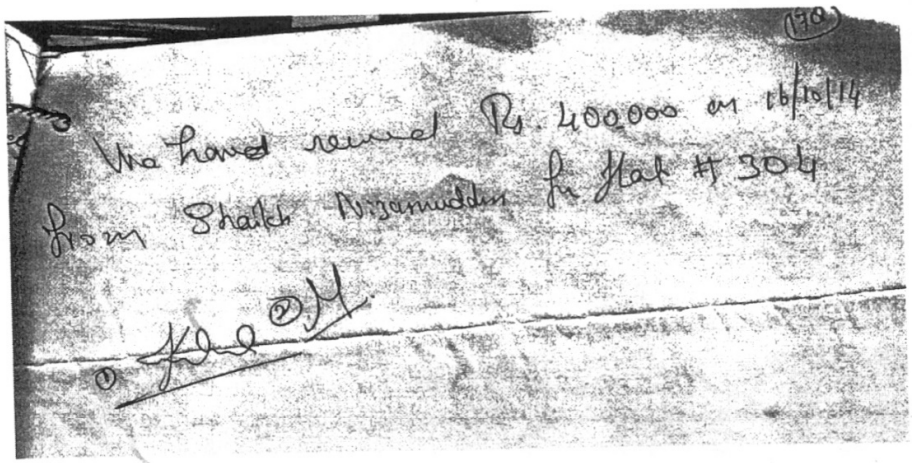
Q4. During the course of search at your residence on 30.8.2017, certain documents were found seized. I am showing you page No. 178 to 182 of the seized folder A/IK/07. Please go through these pages and explain the contents.

Ans: I have gone through these pages and confirm that these papers were seized from my residence during the search. Page No. 182 is a receipt given by me to Mr. Roshan Shameer for Rs. 400000/- in cash. This amount is an installment of flat booked by him in Creek Galaxy, Pumpwell. I have received this amount on behalf of Mr. Ali Kutty of Creek Builders as I was present at the building premises. Page No. 181 is an estimate given to a customer for flat No. 304 in Creek Galaxy. Page No. 180 is a receipt given to Mr. Sheik Nizamuddin for the same flat for Rs. 7 lakhs and signed Mr. Ali Kutty for Flat No. 304 and the amount received in cash. Page No. 179 shows total receipt of Rs. 25 lakhs upto 14.9.2015 for the same flat and is signed by Mr. Alikutty.

Q5: Please explain your business relationship with Mr. Ali Kutty of M/s Creek Builders

8.6 Here are the scanned copies of some of the evidences for Mr. Ibrahim Khaleel having collected cash from the buyers of the flat. The documents serially numbered from 178 to 181 found and seized from the residence of Mr. . Ibrahim Khaleel at 20-6-363/1, Badriya, 2nd Cross, Kandak, Mangalore as folder 'A/IK/07' which clearly establishes the same.





8.7 It is also seen that on some occasion Mr. Ali Kutty himself had also collected the sale consideration of the flat either personally or through his accomplice and subsequently paid towards the cost of construction.

(180)

Date : 3/09/14
Place : Mangalore

RECEIPT

Received a sum of Rs. 100000/- (Rupees Seven lakh.. Only) by cash/ ~~Cheque / D.D.~~ mentioned below from Mr./Mrs./ Ms./M/s..... Shaikh Nizamuddin W/o./D/o./S/o.....
.....,R/o.....
.....
towards booking charges of Apartment No. 304, measuring 1888 Sq. Ft. of super built up area in the ..... III ..... Floor of THE Greels Galaxy.. Apartment Building, Mangalore, subject to the terms and conditions hereof.

~~Details of Cheque/ D.D.~~

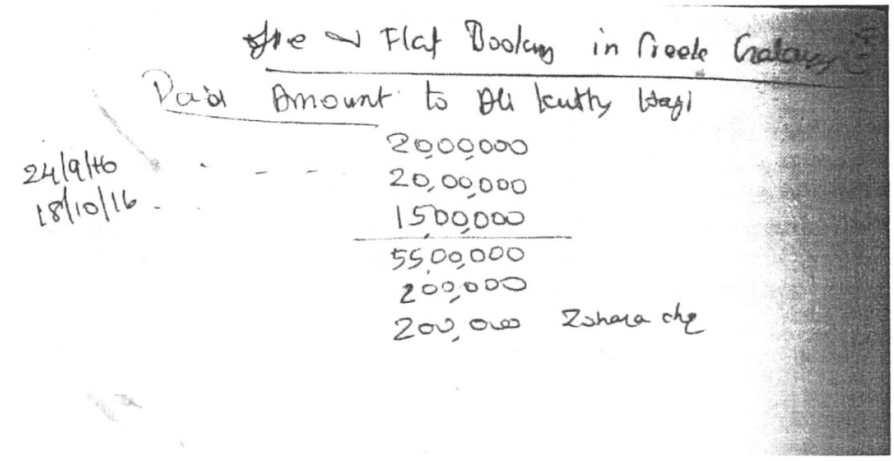
M/s. .....

Terms and Conditions :

(1) Cheque and D.D. subject to realisation.
(2) Booking is subject to entering into Agreement for Sale by payment within ..... days.
(3) On dishonour of Cheque /D.D. or default of Condition No.(2) booking stands automatically terminated and 10% of the booking amount stands forfeited and balance will be refunded free of interest.
(4) Booking does not create any legal right to the apartment.

8.8 As per the above cash receipt of Rs. 7 Lakhs on 3/9/2014 it is seen that acknowledgment has been issued by Mr. Alikutty himself. Interestingly, it is seen that in the details maintained by Mr. Khaleel (A/IK/7 Page 147) for the cash received by him, Rs. 2 Lakhs has been received on 3/9/2014 and subsequently Rs. 5 Lakhs.

8.9. The cash collected as advance for sale of flats by Mr. Ibrahim Kaleel is seen to have been given to Mr. Alikutty also. Subsequently, the amounts are received back in cash towards the contract works.



It is seen that there are umpteen number of evidences, seized during the course of the search, which all tallies with other evidences showing unaccounted entries. Further, the accounted entry as per the same seized material, which contains the unaccounted data also, are found to tally with the statement of accounts.

8.10 The seized record:A/IK/7, page 145 to 147 admittedly proves the receipt of cash outside the accounts. The total cash receipts amounted to Rs. 4,93,05,000/- up to the 03.01.2017. In answer to question 33 in the sworn statement u/s. 132(4), the assessee has stated that "..I under take to pay taxes on the above unaccounted cash receipts..". The relevant portion of the question and the answer given by the assessee in the voluntary statement given on oath u/s. 132(4) is reproduced here under:

Q.33. I am showing you the document marked as Annexure A/IK/07, page Nos. 145 to 150 which was 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, 2nd Cross, Kandak, Mangalore. Kindly explain the contents of these pages.

Ans. The tally sheet reflects ledger account details of Creek Developers & Promoters, Mangalore. In page Nos. 148 to 150, I have summed up the total receipts received through bank accounts (Corporation Bank Account of Emkay Hindustan Infrastructure) as Rs. 9,97,77,000 as on 22-07-17 as written by me in the sheets . Sheet Nos. 145 to 147 of this document, reflect the total receipts in cash as **Rs. 4,93,05,000** as on 03-01-2017. After this, there have been no payments received in cash, as can be confirmed also by the cash ledger book I am maintaining. The amount is not reflected in my books of accounts. i undertake to pay the taxes on the above un accounted cash amount received accordingly for various financial years.

8.11 The evidences showing the cash receipt by the assessee firm towards the contract works in CASH outside the accounts have been cross verified by Mr. Ibrahim Kaleel. **Mr. Ibrahim Kaleel had given the voluntary statements on oath u/s. 132(4) on 31/8/2017 and u/s. 131 on 6/9/2017, admitting the unaccounted cash receipts** as the income of the assessee firm. The scanned copy of the sworn statements are attached here under:

Q.47. Do you have anything else to say.

I agree sir for most of the projects I have involved in Large scale cash transaction. These transactions are entered by me due to inadequate knowledge of the Tax laws. As discussed earlier the total unaccounted receipts from the various projects is as follows :

S.No		Issue	Amount	Assessment years
1.	EMKAY Hindustan Infrastructures	Total unaccounted receipt in the Galaxy Creek project	Rs. 4,93,05,000	2017-18
2	Ibrahim Kaleel (Proprietor)	White shell project- Cash Component of receipts	Rs. 43,23,500	AY 2015-16 to AY 2017
3	EMKAY Hindustan Infrastructures	Creek Galaxy project - Cheque/NEFT/RTGS(8% of the total receipts of Rs.5,55,50,000)	Rs. 44,44,000	AY 2015-16, AY 2016-17 & AY 2017-18
4	EMKAY Hindustan Infrastructures	White Shell project - 8% of Rs. 46,32,000/-	Rs. 3,70,560	AY 2015-16 to AY 2016-17
4	IK Sales Corporation	Returns not filed for AY 2016-17 and AY 2017-18	Rs. 15,00,000	AY 2015-16, AY 2016-17 & AY 2017-18
5	Individual	Unaccounted cash found in the house	Rs. 55,00,000	AY 2017-18
		Total	Rs. 6,54,43,060	

With respect to the unaccounted cash receipts, I have incurred cash expenses also, which I request you to consider while calculating the tax liability as per law. Further, I request you not to levy penalty or any prosecution for the tax evasion hereby indulged. I shall set right all my books of accounts and submit the updated books within 10 days time.

31/8/17

DEPONENT

VERIFICATION

I state that whatever stated above is true and correct to the best of my knowledge and belief. The above statement is given by me voluntarily in a sound state of mind without any threat, coercion or undue influence. I am aware of the consequences of any wrong statement given. The above statement has been recorded correctly as deposed by me and I stand by it.

31/8/17

(Before me) 31/8/17

(शेरीफ रशीद, भा.रा.से.)
SHERIEF RASHEED, IRS
सहायक आयकर निर्देशक (अन्वेषण), यूनिट-2
Asst. Director of Income Tax (INV), Unit-2
मंगलूरु Mangaluru - 575 001

(Deponent)

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3.2 From the above statement, the AO came to the conclusion that since the books are maintained by Mr. Ibrahim Khaleel, who is the partner of the assessee firm and the said amount of cash of Rs.4,93,05,000/- reflected in seized material A/IK/07 at pages 145 to 147 shows that the receipt of unaccounted cash up to 3.1.2017. Accordingly, he appropriated this amount of Rs.4,93,05,000/- to four assessment years as above. Now the contention of ld. A.R. is that these loose slips cannot be basis for any addition as unaccounted cash receipts in these assessment years since Mr. Ibrahim Khaleel has bee marketing the flats and collecting the consideration from clients with the consent of Mr. Ali Kutty who is an NRI who lives most of the time abroad. Mr. Ibrahim Khaleel had received this amount on behalf of Mr. Ali Kutty and this amount even Mr. Ibrahim Khaleel admitted to be received the said amount cannot be taxed in the hands of the present assessee who has no element of income on this count. Now the question before us is whether above incriminating material was found during the course of search, which is being scribbling in loose pad is sufficient enough to draw an adverse inference against the assessee to conclude that information contained therein the said incriminating material relates to undisclosed income of the assessee, though assessee's partner Mr. Ibrahim Khaleel categorically denied the receipt of said amount on behalf of present assessee and confirmed that it was received on behalf of Mr. Ali Kutty who was non-resident and lives in abroad. In our opinion, statement recorded under various provisions of the Income Tax Act are a vital tool in the hands of the Income Tax authorities to make an addition in an assessment coupled with the admission made by the maker/assessee, if it is supported by corroborative evidence. In the present case, the contents recorded in the statement not supported by corroborative evidence, solely on the basis of statement recorded during the course of search, no adverse inference can be drawn against the assessee, more particularly when there is absence of corresponding entry in the account of the opposite party, which precludes alleged transaction. It is not the case of the AO that, there is corresponding entry in the assessee's account providing corroboration. It is well settled principle of law that admission is an extremely important piece of evidence, but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of accounts did not correct disclose the correct state of facts. The principle is supported by the decision of Hon'ble Supreme Court in the case of Pullangode Rubber Produce Company Ltd. Vs. State of Kerala reported in 91 ITR 18 (SC).

3.3 In this factual background, if we examine the facts of present case, one has to see whether addition made by AO towards unaccounted cash receipts received from various persons as recorded in seized document, which is being a scribbling pad. Admittedly, incriminating material found during the course of search does not bare the signature of any person and also the searched team have not brought on record that who has written the said document. It also does not contain any narrations with reference to who has paid the said amount, on what date, it has been paid and the purpose for which it has been paid. According to the A.O., the assessee has recorded the cash receipts from various parties and which is not reflected in the books of accounts maintained by the assessee. However, when the statement recorded by searched team from Mr. Ibrahim Khaleel, partner of assessee's firm clearly mentioned that he has been marketing the flats, collecting

the consideration from the clients with the consent of Mr. Ali Kutty. Mr. Ali Kutty is an NRI who lives most of the time abroad. Mr. Ibrahim Khaleel received the amount on his behalf and this statement has been reproduced in the earlier para of this order. He also stated that an amount of Rs. 4 lakhs has been received from Roshan Shameer and this amount was towards the instalment of flat booked by him in Creek Galaxy, Pumpwell and also Mr. Ibrahim Khaleel stated that this amount has been received on behalf of Mr. Ali Kutty of Creek builder. Regarding page 181 he has stated that it is an estimate given to customer for flat No.304 in Creek Galaxy. Page 180 is a receipt given to Mr. Sk. Nizamuddin for the same flat for Rs.7 lakhs and signed by Mr. Ali Kutty for flat no.304 and the amount received in cash. Page 179 was the total receipt of Rs.35 lakhs up to 14.9.2015 for the same flat signed by Mr. Ali Kutty. To the question No.33, Mr. Khaleel has stated as follows:

M/s Emkay Hindustan Infrastructure - Order u/s.144 r.w.s.153C - A.Y. 2014-15 CC-2,Mng

DIN NO: ITBA/AST/M/153C/2019-20/1023048748(1)

Q.33. I am showing you the document marked as Annexure A/IK/07, page Nos. 145 to 150 which was 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, 2nd Cross, Kandak, Mangalore. Kindly explain the contents of these pages.

Ans. The tally sheet reflects ledger account details of Creek Developers & Promoters, Mangalore. In page Nos. 148 to 150, I have summed up the total receipts received through bank accounts (Corporation Bank Account of Emkay Hindustan Infrastructure) as Rs. 9,97,77,000 as on 22-07-17 as written by me in the sheets . Sheet Nos. 145 to 147 of this document, reflect the total receipts in cash as **Rs. 4,93,05,000** as on 03-01-2017. After this, there have been no payments received in cash, as can be confirmed also by the cash ledger book I am maintaining. The amount is not reflected in my books of accounts. i undertake to pay the taxes on the above un accounted cash amount received accordingly for various financial years.

8.11 The evidences showing the cash receipt by the assessee firm towards the contract works in CASH outside the accounts have been cross verified by Mr. Ibrahim Kaleel. **Mr. Ibrahim Kaleel had given the voluntary statements on oath u/s. 132(4) on 31/8/2017 and u/s. 131 on 6/9/2017, admitting the unaccounted cash receipts** as the income of the assessee firm. The scanned copy of the sworn statements are attached here under:

3.4 Finally, Mr. Ibrahim Khaleel has stated in Q.No.47 a reproduced in page 19 of this order

3.5 Thus, the AO came to the conclusion that the assessee has systematically recorded cash receipts from various parties, which are not recorded in regular books of accounts maintained by the assessee. The said finding has been arrived on the basis of admission of Mr. Ibrahim Khaleel. However, fact remains that there were no corroborative material either to support the assessee or AO's contention. The assessee has also made an allegation before us that statement was recorded at the time of search under duress and Mr. Ibrahim Khaleel was with totally confused state of mind. The ld. A.R. also submitted that while recording the

statement Mr. Ibrahim Khaleel clearly mentioned in his answer to question no.47 that he has incurred cash expenses also and which has to be considered while calculating the tax liability as per law. In our opinion, even the statement recorded to be considered as true, it has to be considered in its entirety and there shall not be any cherry picking and the AO cannot consider only the portion which is favourable to revenue.

3.6 The ld. D.R. stated that the assessee has entered only the receipt of cash and not recorded any expenses details. Hence, there is no question of giving any deduction towards expenses. The ld. A.R. also submitted that in the question no.47, it was stated by Mr. Ibrahim Khaleel that unaccounted cash collection was Rs.4,93,05,000/- relating to assessment year 2017-18. Contrary to this, the AO spread it to 4 assessment years, which is contrary to the statement recorded on 31.8.2017. In our opinion, there is no correlation between the seized material and answer to question No.33 & 47 and the addition made by AO in this assessment years. Further, the AO stated that assessee has received cash from various parties but failed to bring on record any particular name from whom said cash has been received and also name and address of the person to whom said cash has been handed over. If at all, the AO had details of name and address of person who has paid the cash to the assessee, then he should have examined the said person to know the exact nature of receipts recorded in the impugned loose slips/scribbling pad. There is no iota of any evidence on record to prove that the AO had made any attempt to corroborate the entries mentioned in alleged scribbling pad or brought on record the details of name and address of payee. In the absence of any specific reference to the parties, from whom the monies have been received and also nature of receipt for which cash has been paid, it is very difficult to accept the noting in scribbling pad as undisclosed income of the assessee outside the books of accounts.

3.7 Further, on going through the answer to question no.47, it is abundantly clear that answer to question no.47 purport the statement of assessee and his declaration obtained by search team towards undisclosed income for the period covering the assessment year 2017-18 only and it looks like this is an obtained statement without bringing any material on record to support the same. It is well settled principle of law that when any document like present scribbling pad/loose slips are recovered during the course of search action and the revenue wants to make use of it, the onus is on the revenue to collect cogent evidence to corroborate the noting in alleged documents. In this case, revenue has failed to bring on record any cogent evidence to prove conclusively that the noting in the seized documents refer to the unaccounted cash receipts of the assessee. Further, no circumstantial evidence in the form of unaccounted assets and liabilities outside the books of accounts were found in the course of search action except physical cash of Rs.55 lakhs. In our opinion, the impugned additions made by AO on the basis of seized materials in the form of entries in the loose slips/scribbling pad is an in-advocate material. As such, since it cannot stand on its own legs.

3.8 The main contention of ld. D.R. is that the statement recorded u/s 132(4)/131 of the Act is self-speaking document and it cannot be overruled. In our opinion, reliability of these statements depends upon the facts of each case and particularly surrounding circumstances and in this case, the lower authorities

reached to the conclusion on the basis of assumption resulting into fostering liability on the assessee on the basis of in-advocate material coupled with statement recorded during the course of search since there is no corroborative material to support the contention of the AO. In the absence of corroborative evidence, merely on the basis of admission in the statement recorded u/s 132(4)/131 of the Act, no addition could be made by AO. The AO failed to bring on record any materials to support his view to make an addition and there was no reason as to why AO did not proceed further to enquire into the unaccounted income as admitted by assessee in statement recorded u/s 132(4) of the Act. This fact was also not taken care of and also no corresponding assets with reference to unaccounted cash receipt of Rs.4,93,05,000/- was brought on record. In such circumstances, we are not in a position to sustain this addition. For this proposition, we rely on the following judgement:

a) Sri Ganesh Trading Company Vs. CIT 257 CTR 159 (Jharkhand)

3.9 In the case of CIT Vs. Layer Exports Pvt. Ltd. reported in 53 ITR (Trib) 416 (Mum), wherein held that "loose papers found during the course of search and after considering the relevant facts held that no addition could be made simply on the basis of uncorroborated noting in loose paper found during the course of search action because addition on account of alleged on money receipts made simply on the basis of uncorroborated noting in scribbling or loose sheets of papers made by some unidentified person having no evidentiary value was unsustainable and bad in law".

3.10 Being so, in our opinion, the addition made by AO on the basis of contents in loose slips/scribbling pad is not based on any cogent evidence or unaccounted assets or unaccounted investments unearthed during the course of search, but solely on the basis of assumption and presumptions. In our opinion, suspicion however strong cannot takes place of evidence, which can be used against the assessee. Had it been the case of the AO that the alleged entries in loose slips/scribbling pads and its contents was tested by examination and by cross examining the parties, then obviously it would give rise to an occasion to the AO to rely on said documents to make additions. In the present case, the AO has not made any effort to verify the entries recorded in the loose slips/scribbling pads by making further enquiries and examination/cross examination of the alleged persons or payee of said amount. Further, on perusal of entries in the loose slips/scribbling pads as recorded by AO in the assessment order, we find that nothing was emanating regarding name and address of persons through whom the said amount was received and the parties for which it has been paid. In the absence of any effort from AO by way of further proper enquiries, merely on the basis of entries in the loose slips/scribbling pad coupled with the statement recorded during the course of search, addition cannot be sustained. Being so, we are inclined to delete the addition made by AO in these assessment years towards unaccounted cash receipts by assessee. These grounds of appeal in all these appeals are allowed.

3.11 Since we allowed the main ground of the assessee, the alternative ground of the assessee is infructuous and dismissed."

6.2 According to her, the ratio laid down by Tribunal in the case of Emkay Hindusthan Infrastructure is squarely applicable to the assessee's case and the addition based on that seized material in the case of Emkay Hindusthan Infrastructure to be deleted.

6.3 In our opinion, there is a force in the argument of ld. A.R. Being so, applying the same principles, reliance placed by seized material A/IK/7 pages 145 & 147 is devoid of merits as in the case of Emkay Hindusthan Infrastructure cited (supra). Accordingly, the addition is deleted in this case of assessee also.

6.4 In the result, assessee appeal in ITA No.463/Bang/2024 is allowed.

ITA No.464/Bang/2024 (AY 2015-16):

7. In this assessment year ld. AO made addition of Rs.5 lakhs u/s 69 of the Act placing reliance on the seized material marked as A/MI/06 pages 49 to 53 at the residence of assessee, which is in the agreement dated 6.12.2014 for purchase of non-agricultural property measuring of 10 cents at Kottekar Village, Bangalore entered with Smt. Gulzara Banu. As per agreement, total consideration was Rs.20 lakhs and the assessee has paid Rs.5 lakhs on the date of agreement. The assessee has confirmed the payment vide statement u/s 132(4) of the Act and also statement recorded u/s 131 of the Act.

8. We have heard the rival submissions and perused the materials available on record. In this case, addition was based on the statement recorded u/s 132(4) & 131 of the Act on various dates from assessee. There is no corroborative material to suggest that this is unaccounted payment made by the assessee in the assessment year under consideration. The assessee has been assessed to tax and offered the income in the assessment year under consideration on the basis of presumptive income declared u/s 44AD of the Act. The seized material relied by the AO i.e. A/MI/06 is not self-sufficient to sustain the addition. More so, the

revenue authorities have not examined the parties concerned who has received the payment to prove conclusively that there was an actual payment made by assessee, which was undisclosed by the assessee in his books of accounts. The evidence brought on record by the department is not enough to fasten additional tax liability on the assessee. The burden is on the department to prove conclusively that the document No.A/MI/06 found at page 49 to 53 found at the premises of the assessee represents the unaccounted payment made by assessee to Mrs. Gulzara Banu. The department without examining Mrs. Gulzara Banu had came to a conclusion that there was unaccounted payment made by assesse by way of cash to her. In our opinion, this addition is based only on conjectures and surmises and not based on corroborative material. As such, we are not in a position to sustain the addition. Further, the ld. AO has failed to establish live link between the seized material and the statement of recipient who has received this payment. There is no conclusive presumption to say that actual payment has been passed to Mr. Gulzara Banu unless he has confirmed this payment and there after given a cross examination to the present assessee so as to make addition. Being so, as discussed in earlier para of this order without corroborative material and or incriminating material for the actual payment of Rs.5 lakhs to Mrs. Gulzara Banu, addition cannot be made. Hence, we delete the additions.

9. In the result, appeal of the assessee in ITA No.464/Bang/2024 is allowed.

ITA 465/Bang/2024 (AY 2016-17):

10. In this assessment year there was an addition of Rs.29.5 lakhs have been made u/s 69 of the Act on the basis of seized material A/IK/7 pages 145 to 147 found during the course of search at the residence of Ibrahim Khaleel in the case of Emkay Hindusthan Infrastructure cited (supra). According to the ld. AO,

as per this seized material assessee has paid a sum of Rs.29.5 lakhs to Mr. Ibrahim Khaleel in cash towards the cost of construction as contract receipt. This evidence mainly contains the details of amount received from Ali Kutty, the promoter of the Greek Galaxy Project. The amount collected by Ibrahim Khaleel from the buyer of the flat on behalf of Ali Kutty and this payment has been received from one "Mr. Puttu Monu". According to the ld. AO, Puttu means known other than the present assessee. The assessee outrightly rejected this payment and stated that these loose slips cannot be based for addition in the hands of the assessee.

10.1 As discussed in assessment year 2014-15, this seized material has been considered by this Tribunal in the case of Emkay Hindusthan Infrastructure in ITA Nos.979 to 983/Bang/2022 for the assessment years 2014-15 to 2018-19 dated 16.6.2023 and held that this seized material being loose sheets not sufficient to hold that any unaccounted receipts or payments to make any addition in this count as extracted in earlier para of this order. Accordingly, this addition is deleted. Appeal of the assessee in ITA No.465/Bang/2024 is allowed.

ITA No.466/Bang/2024 (AY 2017-18):

11. First ground with regard to addition in this appeal is of Rs.9,63,350/- made on the basis of 26QB Challan, wherein it was showing the TDS made on the immovable property transaction u/s 194IA fo the Act. According to the ld. AO, Manohar B. Shetty had paid the sale consideration of Rs.56.23 lakhs and made a TDS of 1% on the transaction entered into by him with Hindusthan Infrastructure Developers, a firm with the assessee as the managing partner. According to the ld. AO, total income estimated from the project was as follows:

a) 5945 sq.ft. commercial area at Rs.500/- p.sq.ft.-Rs.7,97,500/-
b) 5646 sq.ft. residential flats at Rs.200/- psq.ft. – Rs.11,29,200/-

Total - Rs.19,26,700/-

11.1 50% of the said amount is assessed in the hands of present assessee at Rs.9,63,350/-. Against this assessee is in appeal before us.

12. We have heard the rival submissions and perused the materials available on record. This is the project by name Sita Plaza Developed Mr. Manohar B. Shetty, joint development agreement with Hindusthan Infrastructure Developers (HID) wherein the present assessee Mohammed Ibrahim is the Managing Partner of (HID). In our opinion, the transaction took place in the hands of firm in the name of Hindusthan Infrastructure Developers (HID) cannot be brought to tax in the hands of the present assessee who is only the managing partner of the said firm (HID) since the present assessee and that firm are two different taxable units and each one is distinguished and separate assessable unit for the purpose of Income Tax. Accordingly, we are of the opinion that this impugned amount cannot be taxed in the hands of present assessee in his individual capacity. Accordingly, the addition is deleted.

13. Next ground is with regard to addition of Rs.10 lakhs under the head "income from other sources". The seized material A/MI/6 pages 23 to 28 being a copy of sale agreement dated 17.9.2016. As per this agreement 226 Sq.ft. shop room bearing No.16A in the ground floor of the building "Smart Towers" at Mullinia village, Mangalore had been sold to Mr. Liyaqat Khan for a consideration of Rs.18.08 lakhs, out of which Rs.10 lakhs was received as cash.

13.1 The ld. A.R. submitted that assessee has not received any amount in cash. He was only developer in said project. It is not yet been completed and the ld. AO made addition only on the basis of statement recorded u/s 132(4) of the Act on 31.3.2017, statement recorded u/s 131 of the Act on 5.9.2017 without properly verifying the disclosure of profit arose from this transaction as soon as the project was completed.

14. We have heard the rival submissions and perused the material available on record. In our opinion, there is a sale agreement dated 17.9.2016 which shows the payment. However, the contention of the assessee is that the assessee has offered the profit arose from this transaction in subsequent assessment years as soon as the project is completed, which is required examination. Accordingly, the issue is remitted to the file of ld. AO for fresh consideration to verify whether this income is subject to tax in any subsequent assessment year.

15. Next ground in this appeal is with regard to addition of Rs.10 lakhs towards bogus loan based on the seized material marked as A/M16/pages 92 to 94. This is an agreement signed on 10.1.2017 for a business loan of Rs.10 lakhs taken by present Mohammed Ibrahim from Abdul Saleel GH. According to the ld. AO in the sworn statement recorded on 30.8.2017, 5.9.2017 and 30.10.2017, assessee disclosed the above amount of Rs.10 lakhs as undisclosed income. Hence, addition was made.

15.1 We have heard the rival submissions and perused the materials available on record. This addition has been made only on the basis of statement recorded u/s 132(4) of the Act which is unsubstantiated document without verifying the concerned persons involved therein i.e. Mr. Abdul Saleem GH. The addition based only on the basis of sworn statement recorded u/s 132(4) of the Act cannot be based for addition without any corroborative material as discussed in earlier para of this order. This addition is deleted

16. Next ground No.3 is with regard to addition of Rs.2,41,47,000/- u/s 69B of the Act based on the loose slips. This addition consists of following:

(i) Unexplained investment of Rs.25 lakhs u/s 69

a) Purchase of property jointly with Ali Kutti

b) The seized material A/MI/4 pages 116 to 118 in connection with the property transaction relating to 33 cents of land at Kothari village for Rs.1.26 crores.

c) The assessee paid Rs.25 lakhs advance during the previous year 2017-18.

16.1 The contention of assessee that the assessee not party to this agreement and the party to this agreement were Hindusthan Greek Developers, wherein the assessee is partner and the property was purchased by Hindusthan Greek Developer who is being a separate and distinct assessee being a partnership firm. Further, it was submitted that Hindusthan Greek Developer had taken loans from SCDCC Bank and the said sources of payment has been explained. In our opinion, these facts require to be examined at the end of ld. AO. Accordingly, the issue is remitted to the file of ld. AO for fresh consideration. We also make it clear that addition shall not be made on the basis of unsubstantiated loose slips, if any and AO shall be precluded from making any addition on the basis of suspicion and guess work. Ordered accordingly.

17. Next ground in this appeal is with regard to addition of Rs.12 lakhs during the demonetization period M/s. Hindusthan Greek Developers, a partnership firm with Md. Ibrahim Khaleel as Managing Partner deposited cash of Rs.12 lakhs to account No.00073510000606 to the said account of the firm with SCDCC Bank, Maidan Cross Road bramnch, Mangalore. The ld. AO asked to explain the source for the same, which was not explaioned.

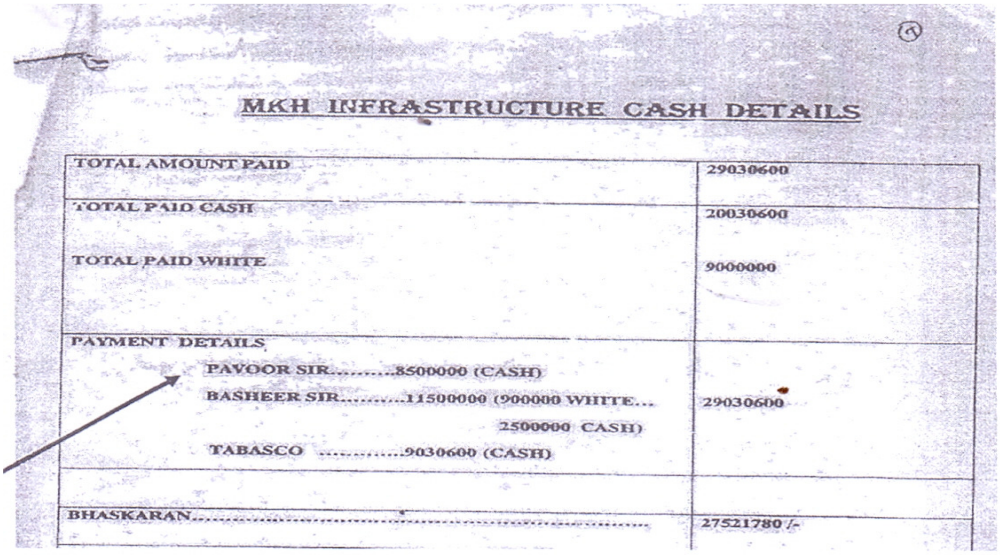
17.1 Before us, the ld. A.R. submitted that this amount has been deposited by the firm not by the assessee and the assessee being individual not required to explain the source of the firm account. At best, the ld. AO can examine the same in the hands of the firm only not in the hands of the assessee.

18. We have heard the rival submissions and perused the materials available on record. As contended by the ld. A.R., if the

amount of Rs.12 lakhs deposited to the account of M/s. Hindusthan Greek Developers to their bank account No.00073510000606 with SCDCC Bank, Maidan Cross Road Branch, Mangalore, the assessee not required to explain the same. Hence, if it is so, the addition cannot be made in the hands of the assessee and if the deposit made in the firm's bank account, the addition to be deleted. However, if it is contributed by Md. Ibrahim as stated by latter filed before ITO Ward-2(2), Central Revenue Building, Hathavara, Mangalore vide dated 4.7.2019, it has been contributed by present assessee out of his agricultural income, then due credit to be given towards the sources explained by the assessee. Since this required verification at the end of ld. AO, the issue is remitted to the ld. AO for fresh consideration.

19. Next addition of Rs.1,33,50,000/- u/s 69 of the Act. This addition has been made on the basis of seized document A/MI/6 pages 95 to 98 which is an agreement dated 18.7.2016, between Pavoor Mohammed, Son of Mohammed Ibrahim, B.T. Road, Uppada with PA Mohammed. According to the ld. AO, Mr. Pavoor Mohammed entered into agreement to purchase the property measuring 2.67 acres situated at Teriya, Kasargod district, Kerala for a consideration of Rs.1,33,50,000/-. According to the ld.AO, the full consideration has been paid by cash to the tune of Rs.1,33,50,000/-. It was stated in the 4th page of the agreement that even though this agreement does not have any legal backup, it is signed based on mutual trust in front of the witnesses. The original agreement was kept with Mr. Pavoor Mohammed who do not sign that agreement. It is worth noting that as original agreement was kept with him, and the receiver of the money as well as the witness have duly signed, and the possessor of the document Mr. Pavoor Mohammed could sign the agreement at any time as the agreement was in his possession. Thus, it was inferred that PA Mohammed is son of Mohammed Ibrahim, the present assessee.

However, this fact has been denied by the assessee in the statement recorded u/s 132(4) of the Act and he had no son namely PA Mohammed or Pavoor Mohammed as son names are (1) Mousin (2) Mufeev & (3) Muneeb. However, it was stated that this transaction was not took place. However, ld. AO placed reliance on seized document found at the premises of Tabesco Infra Development Pvt. Ltd. in which Mohammed Ibrahim is the Managing Partner. In that document marked as A/THI/8 page 7 specifically mentioned that "Pavoor Sir" which reads as follows:



MKH INFRASTRUCTURE CASH DETAILS

TOTAL AMOUNT PAID	29030600
TOTAL PAID CASH	20030600
TOTAL PAID WHITE	9000000
PAYMENT DETAILS PAVOOR SIR.....8500000 (CASH) BASHEER SIR.....11500000 (900000 WHITE... 2500000 CASH) TABASCO .....9030600 (CASH)	29030600
BHASKARAN.....	27521780 /-

19.1 Further statement of Smt. Jhansi Dinu was recorded who said that Pavoor Sir is none other than Mohammed Ibrahim. Since the source of this payment of Rs.1,33,50,000/- is not explained by assessee though the deal was said to be explained the said addition has been made and confirmed by the ld. CIT(A).

20. We have heard the rival submissions and perused the materials available on record. The addition herein is solely based on the unsigned agreement found during the course of search action marked as A/M16/pages 95 to 98 dated 18.7.2016 wherein Pavoor Mohammed, son of Mohammed Ibrahim entitled to agreement for purchase of 2.67 acres of property from Mr. PA

Mohammed. According to the ld.AO, Pavoor Mohammed was son of present Mohammed Ibrahim. Hence, the addition was to be made in the hands of present assessee. To support his view, he took the benefit of the statement recorded u/s 132(4) of the Act from Jhansi Dinu and also loose slips A/THI/8 page 7 as reproduced in earlier para. As discussed in earlier para of the order, first of all, the assessee is not having a son by name Pavoor Mohammed. He had 3 sons that fact also recorded by ld. AO namely Mousin, Mufeev and Muyneeb. More so, the agreement was not signed by seller PA Mohammed. According to the ld.AO, since the document was retained by PA Mohammed, he could sign at any time. As such, he took the face value of that agreement. But the fact is that he has not verified with the PA Mohammed whether there was actual payment of money by Pavoor Mohammed to PA Mohammed. It is also recorded in the agreement in the 4th page of the agreement that even though this agreement does not have any legal backup, it is signed based on the mutual trust in front of the witness. The ld. AO totally ignored this fact of this agreement and also he ignored the fact of this agreement was not corroborated with the actual registration of the property in favour of Pavoor Mohammed. More so, as pointed out earlier PA Mohammed is not at all the son of the present assessee. The real intention of this agreement not at all verified by the lower authorities and have went at the face of this agreement though it was not acted upon. Hence, we are of the opinion that the addition is based on only uncorroborated materials marked as seized material A/M16/pages 95 to 98 and the statement of party Jhansi Dinu without cross verifying the same with the present assessee. Hence, we delete the addition made on the basis of unsubstantiated statements of the parties.

21. Next addition u/s 69 of the Act at Rs.63,27,000/-. The assessee has deposited Rs.59 lakhs to various bank accounts during demonetization period with the Federal Bank as follows:

a)	A/c No.11750200012182	-	Rs.59 lakhs
b)	A/c No.11750200014444	-	Rs.2.77 lakhs
c)	A/c No.11750100085841	-	Rs.1.5 lakhs
	Total	-	Rs.63.27 lakhs

21.1 The assessee not at all explained the source of this deposit. Hence, the addition was made by ld. AO.

22. We have heard the rival submissions and perused the materials available on record. Before us, it was submitted that assessee had sufficient withdrawals from various bank accounts and past savings which arise out of agricultural income. Hence, the addition cannot be made. The order of the ld. AO is ex-parte. Before ld. CIT(A), assessee has not placed necessary evidence to explain the source of deposits whether it is from agricultural activities or from earlier savings/past withdrawals. It is the duty of the assessee to explain the source for deposit of said amount of Rs.63.27 lakhs during the course of demonetization. Accordingly, we remit this issue to the file of ld. AO to examine the same. The assessee is required to furnish all details explaining the source of deposit. If the assessee furnishes the evidences explaining the sources, it will be considered in proper perspective and addition to be deleted. Ordered accordingly.

23. Next ground is with regard to addition of Rs.7,70,000/- as unexplained investment u/s 69 of the Act. During the course of search action, there was seized material marked as A/IK/7 pages 145 & 147 was found and seized which shows the details of amount received from Mohammed Ibrahim Khaleel in cash towards the cost of construction as contract receipt. The evidence mainly contains the amount received from Mr. Ali Kutti, Promoter of Greek Galaxy Project. The amount collected by Ibrahim Khaleel from the buyers of the flat on behalf of Mr. Ali Kutty as admitted and the amount collected by Mr. Ibrahim Khaleel; from one person written in the seized records as Puttu Monu. In the beginning it was written by Ibrahim Khalee, the amount in thousands. For example,

Rs.1,000/- means Rs.10,00,000/-, which is very much evident since the total is to be in the full form. Later on Mr. Ibrahim Khaleel stated writing the amount in full form. As per the seized record, the total contract amount received either from Ali Kutty or from the buyer or from Mr. Puttu Monu, amounted in total to Rs.4,93,05,000/- from the financial year 2013-14 to financial year 2016-17. This seized material resulted in addition of Rs.7.70 lakhs in the assessment year 2017-18.

24. After hearing both the parties, we are of the opinion that this impugned seized material has been considered in the case of M.K. Hindusthan Infrastructure in ITA Nos.979 to 983/Bang/2022 vide order dated 16.6.2023 and deleted the addition in that case as extracted in earlier para of this order in assessment year 2014-15. Hence, the addition is deleted on the same basis in the assessment year 2017-18.

25. In the result, appeal of the assessee in ITA No.466/Bang/2024 is partly allowed for statistical purposes.

ITA No.486/Bang/2019 (AY 2018-19):

26. In this appeal assessee raised grounds with regard to addition of Rs.9,63,350/- arising out of the Sita Plaza Project developed with Manohar B. Shetty by JDA entered with Hindusthan Infrastructure Developers. As discussed in earlier para of this order in ITA No.466/Bang/2024 for assessment year 2017-18, the addition of Rs.9,63,350/- deleted as this transaction was not in the name of the present assessee Mohammed Ibrahim Moiddin. Instead it was carried on by Hindusthan Infrastructure Developers having JDA with Manohar B. Shetty. Accordingly, this addition is deleted. This ground of appeal of the assessee is allowed on same principles.

27. Next ground of appeal of the assessee is Rs.85 lakhs u/s 69 of the Act on account of cash invested by assessee in Tabesco Hindusthan Infra Developers Pvt. Ltd. outside the accounts for making payments to contractors M.K. Hindusthan Infrastructure

Pvt. Ltd. in the statement recorded u/s 132(4) of the Act on 30.8.2017 it was stated that the above amount represent the undisclosed income of M/s. Tabesco Hindusthan Infra Developers Pvt. Ltd. The assessee had once again confirmed and reiterated this disclosure of the undisclosed income in the sworn statement u/s 131 of the Act recorded on 5.9.2017 and in the statement dated 30.10.2017 recorded u/s 132(4) of the Act. Thus, while passing the assessment order in the case of Tabesco Hindusthan Infra Developers Pvt. Ltd., the total cash payment of Rs.2,00,30,600/- made to M.K. Hindusthan Infrastructure has already been assessed in the hands of Tabesco Hindusthan Infra Developers Pvt. Ltd. The same has been treated in the hands of assessee at Rs.85 lakhs made u/s 69 of the Act on protective basis. Against this assessee is in appeal before us.

28. We have heard the rival submissions and perused the materials available on record. We already held in earlier part of this order that addition was only on the basis of section 132(4) of the Act and unsubstantiated documents and the addition cannot be made. Applying the same ratio, we delete this addition. Accordingly, this protective addition also cannot survive. The addition is deleted.

29. In the result, appeal of the assessee in ITA No.486/Bang/2024 is allowed.

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

Sd/-	**Sd/-**
(Keshav Dubey)	**(Chandra Poojari)**
Judicial Member	**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.