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

BEFORE CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA Nos.914 and 922/Bang/2024
Assessment Years : 2009-10 and 2010-11

DCIT, Ward – 6(1)(1), Bengaluru.	Vs.	Shri Bommai Sommappa Basavaraj, No.4, Matadahalli Extention, R. T. Nagar, Bengaluru – 560 032. **PAN : AFOPB 4892 E**
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sandeep Chalapathy, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	24.07.2024
Date of Pronouncement	:	29.07.2024

O R D E R

Per Chandra Poojari, Accountant Member:

These appeals at the instance of the assessee are directed against different Orders of NFAC for Assessment Years 2009-10 and 2010-11, both orders dated 06.02.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act').

2. The grounds raised in both the appeals are common in nature. Hence, both the appeals were heard together for the sake of convenience. The common grounds of appeal raised by the Revenue are as follows:

1. *Whether in the facts and circumstances of the case, the Ld. CIT(A) being a fact finding authority has erred in allowing relief to assessee on the ground that factual verification and nexus between the assessee and information gathered from the searched party M/s. RNS Infrastructure Pvt. Ltd. is not established by the Assessing Officer even though the Ld. CIT(A) is empowered to call for remand report as well as make such inquiry as per Section 250(4) of Income Tax Act?*

2. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in not appreciating that the assessee was holding the charge of Minister of Major and Medium Irrigation in State Government and tangible information was unearthed during search proceedings from M/s. RNS Infrastructure Pvt. Ltd. regarding unlawful payments being made in cash during execution of Upper Bhadra Irrigation Project carried out under the Ministry headed by assessee himself)*

3. *Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing absolute relief to assessee without appreciating that it is not a case of mistaken identity as the information from Investigation Wing would not have been transmitted to jurisdictional assessing officer without analysis and nexus of the abbreviated codes and thus, in circumstantial facts of the case the matter requires to be remitted back to the Assessing Officer?*

3. At the outset, it was observed that there is a delay in filing the appeal by 37 days in Assessment Year 2009-10 and 38 days in Assessment Year 2010-11. The AO filed the condonation petition explaining the delay for the reason that there was a change in the jurisdiction of the assessee. Hence, the transferring office was engrossed in time barring work and the present AO received the PAN and case records only on 12.04.2024. Thereafter, the appeals were filed on 13.05.2024 for Assessment Year 2009-10 and for Assessment Year 2010-11 on 14.05.2024. Thus, he prayed that there is a short delay to be condoned since it was unintentional.

4. We have heard both the parties on delay in filing appeals before this Tribunal. There was short delay of 37 days in filing the appeal for Assessment Year 2009-10 and 38 days for Assessment Year 2010-11. In our opinion, there is a good and sufficient cause for belated filing of these two appeals before the Tribunal. Accordingly, we condone the delay in filing these appeals before this Tribunal. Accordingly, the appeals are admitted for adjudication.

5. Facts of the case are that the assessee was issued with notice under section 148 of the Act for assessment years 2009-10 and 2010-11. The assessment was completed after making an addition of

₹5,10,00,000 and ₹4,00,00,000 for assessment years 2009-10 and 2010-11 respectively.

5.1 The assessee challenged the above assessment orders before the learned Commissioner of Income Tax (Appeals) on the grounds regarding validity of reassessment under section 147 of the Act and on merits. The learned Commissioner of Income Tax appeals passed an order under section 250 of the Act holding that the assessment under section 147 of the Act is liable to be quashed on the ground that there is no nexus between the information received by the assessing officer and the reasons recorded under section 148(2) of the Act. The learned Commissioner of Income Tax (Appeals) further held that the information received by the assessing officer is vague, indefinite, and does not prove anything to state that the assessee has received money and not offered to tax and therefore, there is an income escaping from assessment under section 147 of the Act. The Commissioner of Income Tax (Appeals) also held that the coded words do not have any basis to prove that the abbreviations represent the assessee. The learned Commissioner (A) appreciated the fact that the statement of Mr. Naveen Shetty recorded during the search proceedings under section 132 in the case of M/s. RNS Infrastructure Private Limited states that he has denied outrightly about making any payment to the assessee, and even having any commercial or business transactions with the assessee.

5.2 The department filed the appeals against the above said orders under the section 250 of the Act passed by the Commissioner of Income Tax (Appeals) challenging the issue on merits. It may be stated here that the department has not challenged the order on findings on the validity of 147 of the Act which has been raised by the assessee and held in favour by the Commissioner.

5.3 The assessee is an individual assessed to Income tax by the learned ITO, Ward 6(3)(1), Bangalore (hereinafter referred to as assessing officer). For the AY 2009-10, the assessee filed a return of income declaring a total income of Rs. 2,90,540/-. For the AY 2010-11, the assessee filed a return of income declaring a total income of Rs. 8,38,560/-.

5.4 A search was conducted u/s 132 of Income Tax Act, 1961 (Act) in the premises of M/s. RNS Infrastructure Pvt Ltd. A computer server was seized. It is alleged that the data retrieved from the computer server showed that a sum of Rs. 5.10 crore was paid to the assessee by M/s. RNS Infrastructure Ltd during the financial year 2008-09 and Rs. 4 crore for financial year 2010-11

5.5 Based on the report received form the Director of Income Tax (Inv), the learned assessing officer issued a notice u/s 148 of the Act which was served on the assessee on 19.03.2015. The assessee filed a return in response to the above notice on 06.04.2015. After filing the return, the assessee sought for a copy of the recorded reasons. The same were furnished to the assessee. The assessee filed detailed objections on 18.01.2016. The learned assessing officer disposed off the above objections vide his order dated 08.02.2016. The assessee participated in the proceedings without prejudice to his claim that the reassessment proceedings are bad in law.

5.6 During the hearing, the assessee sought for copy of the statement recorded on oath u/s 131 of the Act from Sri. Naveen R. Shetty and the information received from the Investigation wing. In the statement Sri. Naveen Shetty denied that he had paid any money to the assessee. It was also stated by him that the data retrieved from the server are not part of his accounts and are fabricated. Despite this averment on oath,

the learned assessing officer made an addition of Rs. 5.10 crore. It may also be stated here that the statement received form investigation wing does not say that the amount has been paid to Sri. Basavaraj Bommai (the assessee) but only states that "paid to BB"

5.7 The assessee filed detailed objections during the hearing on 10.03.2016, 29.03.2016 and 30.03.2016 as to why a sum of Rs. 5.10 crore and Rs. 4 crore should not be included. As stated earlier the learned assessing officer rejected the above contentions and added the above sums.

5.8 On appeal before ld. CIT(A), it was submitted as follows:

(i) The assessee submitted that the recorded reasons sate that during the search proceedings u/s 132 of the Act in the premises of RMS Infrastructure Limited, a computer server was found and ceased by DDIT (Inv), unit – 1(3), Bangalore. The retrieved data from the server revealed that RMS Infrastructure Limited has made payments in cash and it was alleged to have been paid to one BB and BSB. The department assumed BB, BSB means Sri. Basavaraj Bommai, the assessee. Based on the above facts the learned assessing officer issued a notice u/s 148 of the Act for the above assessment years.

(ii) There is no nexus between the formation of believe and the reasons recorded and therefore the test laid down by the Hon'ble Supreme court in ITO vs. Lakhmani Mewal Das 103 ITR 437 are not satisfied and therefore the proceedings u/s 147 of the Act are bad in law. By applying the above tests to reasons recorded, the reasons recorded are not valid at all. Firstly, the reasons recorded do not even state that the above sum of Rs.5,10,00,000/- and Rs. 4,00,00,000/- alleged to have been given to the assessee represents any income. The reason simply states that the assessee had received Rs.5,10,00,000/-

and Rs. 4,00,00,000 from RNS Infrastructure Ltd. There is no evidence whatsoever has been brought on record to come to this conclusion. Granting that the formation of belief as required u/s. 147 of the Act is only a prima facie belief and not a final conclusion, still the prima facie belief should be based on some material which would indicate that income has escaped assessment. A mere data in a computer system cannot lead a reasonable person to come to a conclusion that such data/entry represents the income of the persons mentioned therein. Hence, the formation of belief is on the basis of a wholly vague indefinite, farfetched and remote material and as has held by Hon. Supreme Court in Lakhmani Mewal Das (supra), the action u/s. 147 of the Act based on such material is bad in law. Hence, the reasons recorded by the learned assessing officer are invalid.

(iii) There is no tangible material for invoking provisions of section 147 of the Act and therefore the decision of Hon'ble supreme court in CIT(A) Vs. Kelvinator India Limited 320 ITR 561 is applicable and hence, the assessment u/s 147 is bad in law. It is submitted that the so called belief has been formed on the basis of a report received from DDIT (Inv), Unit – 1 (3), Bangalore. The contents of such report have not been stated in the recorded reasons. The learned assessing officer has not conducted even a preliminary enquiry to verify the alleged facts stated in the report before coming to a conclusion that the income has escaped assessment. In this connection, we would like to draw the kind attention of the learned Commissioner of Income-tax (Appeals) to the decision of Hon'ble Delhi High Court in Signature Hotels Pvt Ltd v. ITO 338 ITR(51). In this case, the assessing officer reopened the assessment on the basis of a report received from DDIT (Inv). The Hon'ble Court in paragraphs 13 to 15 at pages 58 and 59 held that the reasons do not satisfy the requirements of section 147 of the Act. It was held that the reasons and the information are extremely scanty and vague. It was

held that the annexure containing details of alleged bogus entry transactions cannot be a pointer and does not indicate any escaped assessment. In the present case also the information received from DDIT (Inv) does not indicate any escaped assessment. The learned assessing officer has not conducted any preliminary enquiry before forming the necessary belief. It is submitted that no belief has not been formed at all by the assessing officer. The reasons recorded do not state anywhere that the sum of Rs.5,10,00,000/- and Rs. 4,00,00,000/- alleged to have been received by the assessee as his income.

(iv) The assessee filed a letter dated 16.03.2016 with the learned assessing officer stating that the material received is data retrieved from TRNSMAIN, TRNSBKP, TRNSOLD DATA, TRNSX, files found in 40GB, 500GB & 80GB hard disk of the server system at the office of M/s.RNSIL at 7th Floor, Naveen Complex, MG Road, Bangalore. In the above material Sl.No., Bill No., Date, Amount, Code, Description, Modified Date and Path are stated. Further it is stated in the Description column that 'Sundry to BSB/BB through Naveen R Shetty.' In this connection, the assessee requested to inform the following;

a) What does BSB means?
b) What does BB means?

(v) The learned assessing officer has not made any comments on the above submissions of the assessee in the assessment order.

(vi) On further request of the assessee, the learned assessing officer provided statement of Mr. Naveen R Shetty, Managing Director of M/s. RNS Infrastructure Limited. The statement was also provided. The assessee submitted that the recorded reasons for reopening the assessment under section 148 states that (refer Para 6 of your letter dated 08/02/2016) *"During the course of search proceedings under section 132 of*

the Income-tax Act, 1961 ("the Act") carried out in the case of M/s. RNS Infrastructure Limited at Naveen Complex, 7th Floor, M.G.Road, Bangalore, digital evidences were gathered evidencing the cash payments made to Shri Basavaraj S Bommai and such cash payments were recorded in the computer system as sundry payments. On verification of the regular books of accounts of M/s. RNS Infrastructure Limited it was found that such cash payments entries were outside the books of account. During the course of search proceedings and also post such enquiries the investigation officers had summoned the concerned persons and their statement recorded. The said details of cash payments alongwith relevant extract of the statements recorded of the persons concerned were forwarding to this office. After due verification of the details received and after examining and co-relating the data obtained from the various systems and the return of income filed by the assessee Shri Basavaraj S Bommai the AO has come to a conclusion that income chargeable to tax has escaped assessment."

(vii) It was submitted that the Answer to Question No.10 of the statement recorded on March 24, 2016 wherein Sri. Naveen R Shetty denied the payments stated in the material. For your ready reference, we reproduce the Question No.10 and Answer.

Question No.10

During the course of search in your premises at Naveen Complex, 7th Floor, 14, M.G.Road, Bangalore a computer server was found and seized vide No.22/AR/ENSIL/2 dated 16.02.2012. All the data, including the deleted data, contained in the above seized computer server was retrieved using forensic tools. On going through the same it is observed that cash transaction has been made by RNSIL for various projects and such expenses are grouped under account codes GE SUN 01 and GE SUN 03 and marked as Sundry payments. Please explain?

Answer: *As I have already stated earlier in my statement recorded by the department that none of these data supposed to have been retrieved from deleted files are related to our accounts. These are fabricated data which have been planted just to create*

problems to our company. I deny any such payments shown in the above data.

(viii) We also draw your kind attention to the Answers of Sri.Naveen R Shetty for the Question Nos. 14, 15, 16 and 17 recorded on March 24, 2016. For your ready reference, we reproduce the Question Nos. 14, 15, 16 and 17 and Answers for the same.

Question No.14

For getting the contracts from Govt. of Karnataka, have you paid money to anyone to get the contracts?

Answer: *No. The contract has been awarded as per the competitive bidding and as per the tender condition.*

Question No.15

Do you know Mr.Basavaraj Bommai, then the Irrigation Minister of the Karnataka Government. If so, how long and what is the nature of contract done by him for RNSIL?

Answer: *I know Sri. Basavaraj Bommai for more than 15 years in personal capacity. Neither I nor the company has the business connection what so ever with him.*

Question No.16

While allotting contract work for upperbhadra project, your company/you paid any money to Basavaraj Bommai for getting the contract work for upperbhadra project.

Answer: *We have not paid any money to get the contract work.*

Question No.17

I am showing to you the hard copy of the information/data retrieved from Trnsmain, Trnsbkp, Trnsold Data, Trnsx, Files found in 40GB, 500GB & 80GB hard disk of the server system at the office of M/s. RNSIL at 7th Floor, Naveen Complex, MG Road, Bangalore which was seized during the course of search u/s 132 conducted in your premises. These above transactions have been recorded in your books of accounts and please confirm the above amounts have been paid to Sri. Basavaraj

Bommai through you?

Answer: *As earlier stated the above documents shown to me supposed to have been retrieved from the deleted files are not part of our accounts. All these data are fabricated data probably implanted just to create problem for our company. I once again reiterate no such payments have been made to Sri. Basavaraj Bommai either through me or anybody else from our company.*

(ix) From the above statements of Sri. Naveen R Shetty, it is clear that, the assessee Sri. Basavaraj S Bommai is not having any business connection with M/s. RNS Infrastructure Limited nor has received any amounts as alleged by the assessing officer.

(x) The assessee relied on the decision of Hon'ble Supreme Court in CBI v. V C Shukla (1998) 3 SCC 410 - 02.03.1998 [SC] for certain propositions as under;

- The scrutiny of entries on loose papers, computer prints, hard disk, pen drives etc. have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence.
- The loose sheets, scribbled note books cannot be treated as incriminating material unless they are corroborated with cogent evidences.
- On the basis of diary recovered from a third party, the prosecution cannot establish the guilt of any other person.
- The relevant portion of the judgment is reproduced below;

> *"In setting aside the order of the trial court, the High Court accepted the contention of the assessees that the documents were not admissible in evidence under Section 34 with the following words:*
>
> *" An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case*

are not records of the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arised to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in he course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second park speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

'Book' ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:-
" In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book..... .....I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S. 34."

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91).

Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal, in business parlance 'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

(xi) The appellant also relied on the decision of the Hon'ble Calcutta Tribunal in the case of T.S Venkatesan Vs ACIT 74 ITD 298 for the identical proposition that the learned assessing officer has not brought any material on record to prove that the "BB" / "BSB" stands for Basavaraj Bommai and therefore, there is no evidence to prove that the assessee has received money. The relevant portion of the judgment is reproduced below:

"This entry being in the hand-writing of Mr. P.R. Pandiya he is the author of the entry and so he has given the above explanation regarding the entry. In this above explanation he has nowhere stated that he made the payment of Rs. 10 lacs to T.S. Venkatesan or that anybody else made the said payment to T.S. Venkatesan. May be that he made the entry on hearsay basis as instructed. In order to fasten a liability of receipt of Rs. 10 lacs as mentioned in the aforesaid entry on page 397 of A-2 there ought to have been some further corroborative evidence. We cannot lose

sight of the fact-situation that this entry is on a loose sheet and not in a books of account regularly maintained in the course of business, nor the books of account is found from the possession of the assessee but it is found from the possession of a third person Mr. Shyam Lutheria. Any other information falling within the words "such other material" or information under Section 158BB(1) can be used for the purpose of computing total income no doubt but the information/material in order to be used to form the basis of addition forming part of the computation of total income the said material/information has to be a reliable evidence. In that view of the matter a mere entry on a loose sheet found from the possession of a third person and a statement given by another third person in connection with search/assessment proceedings of still another third person without the copy of the statement being furnished to the assessee and thereby allowing the assessee an opportunity to rebut the contentions made in the statement and an opportunity to cross-examine the witness coupled with the fact-situation that the statement too is quite vague and general in nature simply stating that the entry represents payment and TSV stands for T.S. Venkatesan without stating that the amount entered therein was paid by him or before him to the assessee together with the fact that the assessee has denied to have received the said sum of Rs. 10 lacs in his sworn statement recorded by Assessing Officer, we are of the considered opinion that it cannot justifiably be assumed/inferred that the sum of Rs. 10 lacs was paid to the assessee. In the circumstances as they stand it cannot also be presumed/inferred that the said payment to the assessee, if at all the same had been there, was a sort of income in the hands of the assessee. We may also note that the provisions of Section 132(9) are not applicable in the matter in hand for the reason that the said document was not recovered from the possession of the assessee and the said provision applies to the person from whose custody the document is seized. As such considering all the facts and circumstances of the case as also the legal principles enunciated in the aforesaid judicial pronouncements we are of the view that the addition of Rs. 10 lacs as assessee's undisclosed income cannot justifiably be made and the addition made by Assessing Officer is unwarranted and not justified. We, therefore, delete the addition."

5.9 The learned commissioner of income tax (Appeals) held the following ;

5.10 There is no nexus between the formation of believe and the reasons recorded. From the reason recorded by the AO, it is seen that he has not specifically mentioned how the name of Shri Basavaraj S. Bommai has been linked to the coded name i.e. BSB, BB etc. The AO has also not brought on record any positive evidence as to why different coded name has been used for the assessee.

5.11 There is no tangible material for invoking provisions of section 147 of the Act. Therefore, the notice issued u/s.148 of the IT Act is hereby quashed.

5.12 It is also seen from the statement of Shri Navin Shetty that he never admitted to have knowledge of the said data and he further stated that he has no business connection with Shri Basavaraj S. Bommai. It is not discernible as to what BB, BSB, BOMMAI stand for and what is the linkage the said coded name with the assessee and how these data & transactions are related with the assessee.

5.13 Mere fact that there were certain entries found from the possession of the third party, no cognizance can be taken in respect of said entries while making the assessment and is not sufficient to make addition in the hand of the assessee on the basis of said data/ entries. The A.O. completely failed to bring any corroborative evidences/materials other than the retrieved data in the form of the computer sheet which contains nothing but the coded/abbreviated names. It is further observed that the addition has been made by the A.O. only on the basis of the coded names which has been attached to the name of the assessee, however the law does not permit the assessment in the name of mistaken identity. Accordingly, the ld. CIT(A) decided the issue in favour of assessee. Against this revenue is in appeal before us.

6. Before us, learned DR submitted that the CIT(A) ought to have called for remand report before deciding the issue in favour of the assessee. As such, he prayed that the issue may be remanded to AO to consider the issue afresh as it requires factual verification of the data found during the course of search action.

7. On the other hand, ld. A.R. submitted as follows:

7.1 The issue regarding the validity of assessment and section 147 of the Act has been decided in favour of the assessee by the learned Commissioner of Income Tax (Appeals). However, the department has not been challenged the said findings and therefore, without challenging the findings of the learned Commissioner of Income Tax (Appeals) on the validity of assessment u/s. 147 of the Act, there is no case to the department to argue on the merits.

7.2 In addition to the above, the assessee also submitted that the learned assessing officer has not brought any material on record to prove that the basis for holding that the assessee has received money from RNS Infrastructure Limited. Despite the statement of Mr. Naveen Shetty, Managing Director of the above company denying the transactions with the assessee and without department bringing any material contrary to the above submissions, the addition was made by the assessing officer.

7.3 It is further submitted that the learned assessing officer has not brought any statement recorded during the search which shows that the above company has paid money to the assessee and in addition, no search material was brought on record to prove the above contentions.

8. We have heard both the parties and perused the materials available on record. In this case, as rightly pointed out by the assessee that the ld. AO not brought on any material on record to prove that the assessee has receive d any money from RNS Infrastructure Ltd. More so, Shri Naveen Shetty, Managing Director of M/s. RNS Infrastructure Ltd. categorically denied the fact that payment of any money to the present assessee. Since there was no material on record to suggest this payment, it is not possible to uphold the addition made by ld. AO. The

AO challenged only the issue relating to granting of relief to assessee. In our opinion, the AO cannot challenge the Order of CIT(A) without challenging the reopening of assessment since the CIT(A) has quashed the assessment as there was no valid reason for reopening of assessment. Since, the legal issue was not challenged, the grounds raised by Revenue on merits cannot survive on its own legs.

8.1 Even otherwise, similar issue came for consideration in the following cases before this Tribunal and considered the similar facts and held as under:

(i) In the case of ACIT Vs. Shri. B. S. Yediyurappa in ITA No.14/Bang/2019 for Assessment year 2011-12 vide Order dated 07.04.2022 deleted the addition held as under:

> *"16. We have heard the rival submissions. Similar issue came for consideration in the case of Shri D.S. Suresh in ITA No. 462 & 463/Bang/ 2020 for assessment years 2009-10 and 2011-12. The Tribunal vide order dated 22.02.2021 held as under: -*
>
> > *"13. We have heard the rival contentions, perused and carefully considered the material on record. In the present case, the addition is based on the diary jottings found during the course of search action in the case of RNSIL on 16.02.2012. We have carefully gone through the diary jottings recorded earlier part of this order. It contains the entry No.5 - MLA Tarikere Rs.27lakhs upto 31.07.20. However, it does not specify date on which it was paid or who has paid. It is not possible to any person to say conclusively that it is relating to these assessment years being the absence of date of payment. Further it is only diary jottings not supported by corroborated material or any independent evidence. In other words there should be a material on record to show that there is an undisclosed income on the basis of material on hand with the Assessing Officer and guess work is not possible. The Assessing Officer shall have the basis for assuming that there was a payment by RNSIL to the assessee which was not disclosed to the Department. The unsubstantiated diary jottings cannot be considered as a conclusive evidence to make any evidence towards undisclosed escaped income. It was held by the Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla 3 SCC 410 that "file containing loose sheets or papers are not books" and hence entry therein are not admissible u/s. 34 of the Evidence Act, 1872. In the present case, the seized material having*

certain entries are found, regarding amount which was presumed thus are illegal payments to the persons mentioned therein. These entries are unsubstantiated. On that basis 0ne cannot reach to the conclusion that figures mentioned therein are the undisclosed payments in these assessment years under consideration to the present assessee. In our opinion, the documents relied on by the Assessing Officer for making addition in these assessment years was dumb document and lead nowhere since these diary jottings are not supported by any corroborative material or evidence to show that the information made by lower authorities is correct. Further unsigned document in the form of diary jottings cannot be relied upon for making or sustaining the addition. In the present case, more so, the Managing Director of RNSIL made a categoric statement in his letter that no payments were made to the assessee in the F.Y. 2008-09 to F.Y. 2010-11. Further even if the Assessing Officer wants to rely on the diary jottings to make an assessment or relying on the statement of any third party, the same is required to be furnished to the assessee and if the assessee wants to cross examine any of the parties whose statements were relied on by the Assessing Officer, the same is to be provided to the assessee. In, the present case, the assessee is having grievance for not furnishing the seized material to the assessee and there was no question of providing an opportunity of cross examining of the parties whose statements are relied on by the Assessing Officer while completing the assessment. In these circumstances, we are not in a position to uphold the addition sustained by the CIT(Appeals). The circumstances surrounding the case are not strong enough to justify the rejection of the assessee's plea of asking the copies of the seized material and providing an opportunity of cross examination of the parties concerned. In view of the above, we set aside the order of the lower authorities and allow the ground taken by the assessee in their appeals for both the assessment years under consideration.

14. In the result, the appeals of the assessee are partly allowed."

17. Further in the case of Shri D.V. Sadananda Gowda in ITA No. 895/Bang/2019 the issue is considered by the Tribunal in order dated 30.03.2021 wherein it is held as under: -

"7. I have heard rival submissions and perused the material on record. Admittedly, the addition of Rs.5 lakh has been made in the case of the assessee only on the basis of diary noting, statement of VP (Finance), RNSIL, and data retrieved by using forensic tools from seized computer server (data was deleted and the same was retrieved by using forensic tools). The assessee had contended that the details of seizure and the harsh value report were not available with the A.O. at the time of assessment. It was stated that the same was not made available to the

assessee nor his representative. It was further submitted that the A.O. has not brought out any nexus between the payment of Rs.5 lakh with that of the assessee. One of the evidences which is purported against the assessee is an electronic record and the same is not collected in compliance with section 65-B of Indian Evidence Act r.w.s. 2(1)(t) of Information Technology Act and section 132(iib) of the I.T.Act. Any electronic record can only be considered as a piece of evidence which shall be as per section 65-B of the Indian Evidence Act and on complying the conditions enumerated u/s 65B(4) of the Indian Evidence Act. The above said principle has been settled by the Hon'ble Supreme Court in the case of (Anver P.V. v. P.K.Basheer and Ors. reported in (2014) 10 SCC 473. The diary noting, the statement of VP (Finance), RNSIL has not pointed out any payment to the assessee. The statement recorded on 16.02.2012 (date of search) was retracted by the VP (Finance) RNSIL on 07.03.2012 itself. The CIT(A) during the course of appellate proceedings had directed the A.O. to grant an opportunity of cross examination of VP (Finance) RNSIL and inspect the incriminating material. The VP (Finance) RNSIL during the course of cross examination had outrightly denied making any payment by him or RNSIL to the assessee. It was further submitted by him that the statement recorded on 16.02.2012 was under duress and he had taken up the matter with the DDIT (Investigation) Bangalore in his letter dated 07.03.2012. This fact is also admitted by the JCIT in her covering letter to the CIT(A) dated 25.10.2018, which is extracted below:-

"The AO's report which is self explanatory is forwarded herewith. It is also submitted that in the statement recorded on 16/02/2012 during search, Sh. Sunil Sahasrabudhe has only explained / given details about some material found during search and has not made any specific admission. As such the claim that the same is obtained by force is not tenable. In that statement, what he had deposed is the fact that the expenditure under the head "sundry" is unaccounted and as no question on the break up details of sundry expenditure was asked, the ***possibility of the name of the appellant appearing in any of the answers does not arise.***

(emphasis supplied)

PADMAMEENAKSHI
Joint.Commissioner of Income-tax
Range-1(3), Bengaluru."

7.1 From the aforesaid facts, it is very clear that there is no nexus between any payment made by RNSIL to that of the assessee. There is no mentioned anywhere that the assessee was the recipient of the payment, the alleged quantum of payment, the date, the month or the year of the

alleged payment. There were two sets of reasons for reopening the assessment, one with Rs.15 lakh and another with Rs.5 lakh. In the impugned assessment order, the A.O. at page 2 had stated that there is reason to believe that the amount of Rs.1 crore chargeable to tax for assessment year 2009-2010 have escaped assessment, while the impugned order relates to the assessment year 2011-2012. All these facts point to a situation that the addition has been made merely on surmises, conjectures and without any valid evidences.

7.2 On identical facts arising out of the same search case, the Tribunal in the case of D.S. Suresh v. ACIT (supra) had held that the addition of Rs.10 lakh for assessment year 2009-2010 and Rs.49 for the assessment year 2011-2012 is to be deleted. The Tribunal held that there is no material / evidence for making such addition. The relevant finding of the Tribunal reads as follow:-

> *"13. We have heard the rival contentions, perused and carefully considered the material on record. In the present case, the addition is based on the diary jottings found during the course of search action in the case of RNSIL on 16.02.2012. We have carefully gone through the diary jottings recorded earlier part of this order. It contains the entry No.5 - MLA Tarikere Rs.27 lakhs upto 31.07.2010. However, it does not specify date on which it was paid or who has paid. It is not possible to any person to say conclusively that it is relating to these assessment years being the absence of date of payment. Further it is only diary jottings not supported by corroborated material or any independent evidence. In other words, there should be a material on record to show that there is an undisclosed income on the basis of material on hand with the Assessing Officer and guess work is not possible. The Assessing Officer shall have the basis for assuming that there was a payment by RNSIL to the assessee which was not disclosed to the Department. The unsubstantiated diary jottings cannot be considered as a conclusive evidence to make any evidence towards undisclosed escaped income. It was held by the Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla 3 SCC 410 that "file containing loose sheets or papers are not books" and hence entry therein are not admissible u/s. 34 of the Evidence Act, 1872. In the present case, the seized material having certain entries are found, regarding amount which was presumed thus are illegal payments to the persons mentioned therein. These entries are unsubstantiated. On that basis one cannot reach to the conclusion that figures mentioned therein are the undisclosed payments in these assessment years under consideration to the present assessee. In our opinion, the documents relied on by the Assessing Officer for making addition*

in these assessment years was dumb document and lead nowhere since these diary jottings are not supported by any corroborative material or evidence to show that the information made by lower authorities is correct. Further unsigned document in the form of diary jottings cannot be relied upon for making or sustaining the addition. In the present case, more so, the Managing Director of RNSIL made a categoric statement in his letter that no payments were made to the assessee in the F.Y. 2008-09 to F.Y. 2010-11. Further even if the Assessing Officer wants to rely on the diary jottings to make an assessment or relying on the statement of any third party, the same is required to be furnished to the assessee and if the assessee wants to cross examine any of the parties whose statements were relied on by the Assessing Officer, the same is to be provided to the assessee In the present case, the assessee is having grievance for not furnishing the seized material to the assessee and there was no question of providing an opportunity of cross examining of the parties whose statements are relied on by the Assessing Officer while completing the assessment. In these circumstances, we are not in a position to uphold the addition sustained by the CIT(Appeals). The circumstances surrounding the case are not strong enough to justify the rejection of the assessee's plea of asking the copies of seized material and providing an opportunity of cross examination of the parties concerned. In view of above, we set aside the order of the lower authorities and allow the ground taken by the assessee in their appeals for both the assessment years under consideration."

7.3 In view of the aforesaid facts and the order of the Tribunal in the case of D.S. Suresh v. ACIT (supra), which is identical to the facts of the instant case, I delete the addition of Rs.5 lakh made by the Income Tax Authorities. It is ordered accordingly."

18. In the present case, the whole addition is made by the A.O. on the basis of the seized material procured from corporate office of M/s.RNS Infrastructure Ltd., at Naveen Complex, 7th Floor, 14 MG Road and at Murudeshwar Bhawan, 604-B, Gokul Road, Hubli marked as 22/A/RNSIL/2, dt.16.02.2012. This seized material shows certain sundry payments grouped under GE SUN 01 and GE SUN 03 and the sundry payments were made by cash. In these sundry payments, certain entries mentioned the name of the assessee and the corresponding payment to him. From this, the A.O. came to conclusion that the assessee being a Chief Minister, and Chairperson of the Karnataka Neeravari Nigam Ltd (KNNL) that had awarded the Upper Bhadra Project (UBP) contract to Murudeshwar Power Corporation Ltd. in 2008-09 to the tune of Rs.1033 Crores and KNNL is the subsidiary of RNSIL, in which case search was took placed and that payment was out of the book payment in connection with

awarding of tender of UBP to KNNL by assessee being a Chief Minister of Karnataka and Chairperson of KNNL and made addition on this count to the tune of Rs.2,11,13,832/-. However, on examining the witness and cross-examination of parties, who denied such payment to the assessee, on that basis, the CIT(A) deleted the addition. The entire case of the department is based on the un-corroborated entries found in the computer server which were retrieved by using the forensic tools. These alleged documents collected by the department from the computers of M/s.RNS Infrastructure Ltd., cannot be described as evidence so as to fasten the tax liability on the present assessee. These are not maintained on day-to-day basis and not the part of the books of accounts maintained by M/s.RNS Infrastructure Ltd., there is no mention of the date on which the alleged payments were made. Even the A.O. not brought on record the dates of such payment, he presumed in wholesome manner that amount of Rs.2,11,13,832/- was the payment made to the present assessee during this assessment year. The payments are within the knowledge of the person, who written it. However, the said person denied the payment in the cross-examination and finally there is no evidence to suggest as to what they stand for and whom they referred to. Since the seized material is neither the regular books of account nor kept in the regular course of business of the assessee. They were not sufficient enough to fasten the liability on the present assessee, against whom they were sought to be used. The seized document collected by the department did not raise a reasonable ground to believe that there is a valid payment to the present assessee so as to award contract to the KNNL and the payment is relating to for awarding the contract of UBP. The seized material itself would not furnished evidences of the truth of their contents and that was not corroborated by any further evidence so as to hold that the assessee has actually received the said payment. In view of this, we are of the opinion that the order of the earlier Bench in the cases of Shri D.S.Suresh Vs. ACIT in ITA Nos.462 & 463/Bang/2020 (AYs.2009-10 & 2011-12), dt. 22.02.2021 and Shri D.V.Sadananda Gowda Vs. ACIT in ITA No.895/Bang/2019 (AY.2011-12), dt.30.03.2021, are squarely applicable to the present facts of the case and accordingly in view of the above discussion, we confirm the deletion of the addition made by the CIT(A). Hence, the grounds raised by the Revenue are dismissed.

19. Being so, taking the consistent view on the issue as considered by this Tribunal, we dismiss all the grounds taken by the Revenue.

20. In the result, Appeal of the Revenue is dismissed and CO filed by the assessee is dismissed, as not pressed."

(ii) In the case of Shri. D. S. Suresh in ITA Nos.462 and 463/Bang/2020 for Assessment Years 2009-10 and 2011-12 vide Order dated 22.02.2021 deleted the addition on merits as follows:

13. We have heard the rival contentions, perused and carefully considered the material on record. In the present case, the addition is based on the diary

jottings found during the course of search action in the case of RNSIL on 16.02.2012. We have carefully gone through the diary jottings recorded earlier part of this order. It contains the entry No.5 – MLA Tarikere Rs.27 lakhs upto 31.07.2010. However, it does not specify date on which it was paid or who has paid. It is not possible to any person to say conclusively that it is relating to these assessment years being the absence of date of payment. Further it is only diary jottings not supported by corroborated material or any independent evidence. In other words, there should be a material on record to show that there is an undisclosed income on the basis of material on hand with the Assessing Officer and guess work is not possible. The Assessing Officer shall have the basis for assuming that there was a payment by RNSIL to the assessee which was not disclosed to the Department. The unsubstantiated diary jottings cannot be considered as a conclusive evidence to make any evidence towards undisclosed escaped income. It was held by the Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla 3 SCC 410 that "file containing loose sheets or papers are not books" and hence entry therein are not admissible u/s. 34 of the Evidence Act, 1872. In the present case, the seized material having certain entries are found, regarding amount which was presumed thus are illegal payments to the persons mentioned therein. These entries are unsubstantiated. On that basis one cannot reach to the conclusion that figures mentioned therein are the undisclosed payments in these assessment years under consideration to the present assessee. In our opinion, the documents relied on by the Assessing Officer for making addition in these assessment years was dumb document and lead nowhere since these diary jottings are not supported by any corroborative material or evidence to show that the information made by lower authorities is correct. Further unsigned document in the form of diary jottings cannot be relied upon for making or sustaining the addition. In the present case, more so, the Managing Director of RNSIL made a categoric statement in his letter that no payments were made to the assessee in the F.Y. 2008-09 to F.Y. 2010-11. Further even if the Assessing Officer wants to rely on the diary jottings to make an assessment or relying on the statement of any third party, the same is required to be furnished to the assessee and if the assessee wants to cross examine any of the parties whose statements were relied on by the Assessing Officer, the same is to be provided to the assessee In the present case, the assessee is having grievance for not furnishing the seized material to the assessee and there was no question of providing an opportunity of cross examining of the parties whose statements are relied on by the Assessing Officer while completing the assessment. In these circumstances, we are not in a position to uphold the addition sustained by the CIT(Appeals). The circumstances surrounding the case are not strong enough to justify the rejection of the assessee's plea of asking the copies of seized material and providing an opportunity of cross examination of the parties concerned. In view of above, we set aside the order of the lower authorities and allow the ground taken by the assessee in their appeals for both the assessment years under consideration.

(iii) Further in the case of Shri D.V. Sadananda Gowda in ITA No. 895/Bang/2019 the issue is considered by the Tribunal in order dated 30.03.2021 wherein it is held as under: -

> *"7. I have heard rival submissions and perused the material on record. Admittedly, the addition of Rs.5 lakh has been made in the case of the assessee only on the basis of diary noting, statement of VP (Finance), RNSIL, and data retrieved by using forensic tools from seized computer server (data was deleted and the same was retrieved by using forensic tools). The assessee had contended that the details of seizure and the harsh value report were not available with the A.O. at the time of assessment. It was stated that the same was not made available to the assessee nor his representative. It was further submitted that the A.O. has not brought out any nexus between the payment of Rs.5 lakh with that of the assessee. One of the evidences which is purported against the assessee is an electronic record and the same is not collected in compliance with section 65-B of Indian Evidence Act r.w.s. 2(1)(t) of Information Technology Act and section 132(iib) of the I.T.Act. Any electronic record can only be considered as a piece of evidence which shall be as per section 65-B of the Indian Evidence Act and on complying the conditions enumerated u/s 65B(4) of the Indian Evidence Act. The above said principle has been settled by the Hon'ble Supreme Court in the case of (Anver P.V. v. P.K.Basheer and Ors. reported in (2014) 10 SCC 473. The diary noting, the statement of VP (Finance), RNSIL has not pointed out any payment to the assessee. The statement recorded on 16.02.2012 (date of search) was retracted by the VP (Finance) RNSIL on 07.03.2012 itself. The CIT(A) during the course of appellate proceedings had directed the A.O. to grant an opportunity of cross examination of VP (Finance) RNSIL and inspect the incriminating material. The VP (Finance) RNSIL during the course of cross examination had outrightly denied making any payment by him or RNSIL to the assessee. It was further submitted by him that the statement recorded on 16.02.2012 was under duress and he had taken up the matter with the DDIT (Investigation) Bangalore in his letter dated 07.03.2012. This fact is also admitted by the JCIT in her covering letter to the CIT(A) dated 25.10.2018, which is extracted below:-*
>
> *"The AO's report which is self explanatory is forwarded herewith. It is also submitted that in the statement recorded on 16/02/2012 during search, Sh. Sunil Sahasrabudhe has only explained / given details about some material found during search and has not made any specific admission. As such the claim that the same is obtained by force is not tenable. In that statement, what he had deposed is the fact that the expenditure under the head "sundry" is unaccounted and as no question on the break up details of sundry expenditure was asked, the* ***possibility of the name of the appellant appearing in any of the answers does not arise.***

(emphasis supplied)

PADMAMEENAKSHI
Joint.Commissioner of Income-tax
Range-1(3), Bengaluru."

7.1 From the aforesaid facts, it is very clear that there is no nexus between any payment made by RNSIL to that of the assessee. There is no mentioned anywhere that the assessee was the recipient of the payment, the alleged quantum of payment, the date, the month or the year of the alleged payment. There were two sets of reasons for reopening the assessment, one with Rs.15 lakh and another with Rs.5 lakh. In the impugned assessment order, the A.O. at page 2 had stated that there is reason to believe that the amount of Rs.1 crore chargeable to tax for assessment year 2009-2010 have escaped assessment, while the impugned order relates to the assessment year 2011-2012. All these facts point to a situation that the addition has been made merely on surmises, conjectures and without any valid evidences.

7.2 On identical facts arising out of the same search case, the Tribunal in the case of D.S. Suresh v. ACIT (supra) had held that the addition of Rs.10 lakh for assessment year 2009-2010 and Rs.49 for the assessment year 2011-2012 is to be deleted. The Tribunal held that there is no material / evidence for making such addition. The relevant finding of the Tribunal reads as follow:-

> *"13. We have heard the rival contentions, perused and carefully considered the material on record. In the present case, the addition is based on the diary jottings found during the course of search action in the case of RNSIL on 16.02.2012. We have carefully gone through the diary jottings recorded earlier part of this order. It contains the entry No.5 - MLA Tarikere Rs.27 lakhs upto 31.07.2010. However, it does not specify date on which it was paid or who has paid. It is not possible to any person to say conclusively that it is relating to these assessment years being the absence of date of payment. Further it is only diary jottings not supported by corroborated material or any independent evidence. In other words, there should be a material on record to show that there is an undisclosed income on the basis of material on hand with the Assessing Officer and guess work is not possible. The Assessing Officer shall have the basis for assuming that there was a payment by RNSIL to the assessee which was not disclosed to the Department. The unsubstantiated diary jottings cannot be considered as a conclusive evidence to make any evidence towards undisclosed escaped income. It was held by the Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla 3 SCC*

410 that "file containing loose sheets or papers are not books" and hence entry therein are not admissible u/s. 34 of the Evidence Act, 1872. In the present case, the seized material having certain entries are found, regarding amount which was presumed thus are illegal payments to the persons mentioned therein. These entries are unsubstantiated. On that basis one cannot reach to the conclusion that figures mentioned therein are the undisclosed payments in these assessment years under consideration to the present assessee. In our opinion, the documents relied on by the Assessing Officer for making addition in these assessment years was dumb document and lead nowhere since these diary jottings are not supported by any corroborative material or evidence to show that the information made by lower authorities is correct. Further unsigned document in the form of diary jottings cannot be relied upon for making or sustaining the addition. In the present case, more so, the Managing Director of RNSIL made a categoric statement in his letter that no payments were made to the assessee in the F.Y. 2008-09 to F.Y. 2010-11. Further even if the Assessing Officer wants to rely on the diary jottings to make an assessment or relying on the statement of any third party, the same is required to be furnished to the assessee and if the assessee wants to cross examine any of the parties whose statements were relied on by the Assessing Officer, the same is to be provided to the assessee In the present case, the assessee is having grievance for not furnishing the seized material to the assessee and there was no question of providing an opportunity of cross examining of the parties whose statements are relied on by the Assessing Officer while completing the assessment. In these circumstances, we are not in a position to uphold the addition sustained by the CIT(Appeals). The circumstances surrounding the case are not strong enough to justify the rejection of the assessee's plea of asking the copies of seized material and providing an opportunity of cross examination of the parties concerned. In view of above, we set aside the order of the lower authorities and allow the ground taken by the assessee in their appeals for both the assessment years under consideration."

7.3 In view of the aforesaid facts and the order of the Tribunal in the case of D.S. Suresh v. ACIT (supra), which is identical to the facts of the instant case, I delete the addition of Rs.5 lakh made by the Income Tax Authorities. It is ordered accordingly."

18. In the present case, the whole addition is made by the A.O. on the basis of the seized material procured from corporate office of M/s.RNS Infrastructure Ltd., at Naveen Complex, 7th Floor, 14 MG Road and at Murudeshwar

Bhawan, 604-B, Gokul Road, Hubli marked as 22/A/RNSIL/2, dt.16.02.2012. This seized material shows certain sundry payments grouped under GE SUN 01 and GE SUN 03 and the sundry payments were made by cash. In these sundry payments, certain entries mentioned the name of the assessee and the corresponding payment to him. From this, the A.O. came to conclusion that the assessee being a Chief Minister, and Chairperson of the Karnataka Neeravari Nigam Ltd (KNNL) that had awarded the Upper Bhadra Project (UBP) contract to Murudeshwar Power Corporation Ltd. in 2008-09 to the tune of Rs.1033 Crores and KNNL is the subsidiary of RNSIL, in which case search was took placed and that payment was out of the book payment in connection with awarding of tender of UBP to KNNL by assessee being a Chief Minister of Karnataka and Chairperson of KNNL and made addition on this count to the tune of Rs.2,11,13,832/-. However, on examining the witness and cross-examination of parties, who denied such payment to the assessee, on that basis, the CIT(A) deleted the addition. The entire case of the department is based on the un-corroborated entries found in the computer server which were retrieved by using the forensic tools. These alleged documents collected by the department from the computers of M/s.RNS Infrastructure Ltd., cannot be described as evidence so as to fasten the tax liability on the present assessee. These are not maintained on day-to-day basis and not the part of the books of accounts maintained by M/s.RNS Infrastructure Ltd., there is no mention of the date on which the alleged payments were made. Even the A.O. not brought on record the dates of such payment, he presumed in wholesome manner that amount of Rs.2,11,13,832/- was the payment made to the present assessee during this assessment year. The payments are within the knowledge of the person, who written it. However, the said person denied the payment in the cross-examination and finally there is no evidence to suggest as to what they stand for and whom they referred to. Since the seized material is neither the regular books of account nor kept in the regular course of business of the assessee. They were not sufficient enough to fasten the liability on the present assessee, against whom they were sought to be used. The seized document collected by the department did not raise a reasonable ground to believe that there is a valid payment to the present assessee so as to award contract to the KNNL and the payment is relating to for awarding the contract of UBP. The seized material itself would not furnished evidences of the truth of their contents and that was not corroborated by any further evidence so as to hold that the assessee has actually received the said payment. In view of this, we are of the opinion that the order of the earlier Bench in the cases of Shri D.S.Suresh Vs. ACIT in ITA Nos.462 & 463/Bang/2020 (AYs.2009-10 & 2011-12), dt. 22.02.2021 and Shri D.V.Sadananda Gowda Vs. ACIT in ITA No.895/Bang/2019 (AY.2011-12), dt.30.03.2021, are squarely applicable to the present facts of the case and accordingly in view of the above discussion, we confirm the deletion of the addition made by the CIT(A). Hence, the grounds raised by the Revenue are dismissed.

19. Being so, taking the consistent view on the issue as considered by this Tribunal, we dismiss all the grounds taken by the Revenue.

20. In the result, Appeal of the Revenue is dismissed and CO filed by the assessee is dismissed, as not pressed."

8.1 By taking a consistent view on this issue, the addition made based on the diary maintained by M/s. R N Infrastructure, in the case of present assessee is also deserves to be deleted. In view of this, we do not find any infirmity in the order of the ld. CIT(A). Accordingly, deletion of addition made by ld. CIT(A) is confirmed.

9. In the result, appeals filed by the Revenue are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(PRAKASH CHAND YADAD)	**(CHANDRA POOJARI)**
Judicial Member	**Accountant Member**

Bangalore.
Dated: 29.07.2024.
/NS/VG/SPSs*

Copy to:

1.	Appellants	2.	Respondent
3.	DRP	4.	CIT
5.	CIT(A)	6.	DR, ITAT, Bangalore.
7.	Guard file		

By order

Assistant Registrar,
ITAT, Bangalore.