

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.164/Nag./2023
(Assessment Year : 2017-18)

Dy. Commissioner of Income Tax
Central Circle-2(1), Nagpur

..... Appellant

v/s

M/s. Metrocity Homes
11A, Ground Floor, Khare Town
Near Dhanwantari Hospital
Dharampeth, Nagpur 440 010
PAN - AAUFM9880A

..... Respondent

Assessee by : Shri Suren Duragkar a/w
Ms. Hemmani Duragkar
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 25/11/2024

Date of Order - 21/01/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the Revenue is against the impugned order dated 31/03/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2017-18.

2. In its appeal, the Revenue has raised following grounds:-

"1. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 16,73,500/- made by the AO which was based on the seized Document No. B-36, and the said document have the evidentiary value.

2. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 2,50,000/- made by the AO which was based on the seized Document No. B - 1/5 and the said document have the evidentiary value.

3. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 7,00,000/- made by the AO which was based on the seized Document No. B - 1/16 and the said document have the evidentiary value.*
4. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 37 ,45,500/- made by the AO which was based on the seized Document No. B - 2/1 and the said document have the evidentiary value.*
5. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 71 ,93,666/- made by the AO which was based on the seized Document No. B - 2/19 and the said document have the evidentiary value.*
6. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 22 ,50,000/- made by the AO which was based on the seized Document No. B-2/21, and the said document have the evidentiary value.*
7. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 26,00,000/- made by the AO which was based on the seized Document No. B-2/30, and the said document have the evidentiary value.*
8. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 10,00,000/- made by the AO which was based on the seized Document No. B-2/30, and the said document have the evidentiary value.*
9. *On the facts and in the circumstances of the case, Ld. CIT(A) failed to appreciate the facts that during the course of search/survey loose paper or any incriminating documents hold that high value and the same would be treated as base of making any addition.*
10. *On the facts and in the circumstances of the case, Ld. CIT(A) failed to appreciate the fact that noting on the loose paper done by the employee of the assessee i.e. M/s Metrocity Homes and the onus to explain the noting on the loose paper lies on the assessee.*
11. *On the facts and in the circumstances of the case, Ld. CIT(A) failed to appreciate the facts that seized documents itself act as a document which has evidentiary value and is sufficient to take it as evidence against the assessee.*
12. *On the facts and in the circumstances of the case, while deleting the addition mentioned in Ground No. 1 to 6, the Ld. CIT(A) has erred in holding that the agreement to sale observed by the AO is unregistered document ignoring finding given the AO on page 6 of the assessment order that the agreement to sale consists of some payment through cheque which are also part of the final sale deed as such the agreement to sale reflect the correct amount of transaction and prove that the assessee has received on money in the said transaction.*

13. Any other grounds that may be raised during the course of appellate proceedings.”

3. Facts in Brief:- In the present case, the assessee is a Partnership Firm. As could be seen from the first appellate order, a search and seizure action under section 132 of the Income Tax Act, 1961 (*the Act*) was conducted on 25/06/2019, in the case of Shri Prashant Bongirwar. During the course of search and seizure operation, several incriminating documents related to the assessee were found and seized from the residential premises of Shri Prashant Bongirwar. On 24/10/2017, the assessee has filed its return of income for the year under consideration declaring total income of ₹ 34,88,760. Statutory notice dated 16/09/2020, under section 153C of the Act, was issued and served upon the assessee, in response to which, on 25/09/2020, the assessee again filed its return of income for the year under consideration declaring total income at ₹ 34,88,760. Subsequently, notice under section 143(2) of the Act dated 08/10/2020 was issued and served. Thereafter, notices dated 08/02/2021 and 30/08/2021, under section 142(1) of the Act were issued and served to the assessee. The Assessing Officer completed assessment under section 153C r/w section 143(3) of the Act, by passing assessment order dated 28/09/2021, determining total income of ₹ 2,32,54,426/- after making following additions:-

1	Unexplained money u/s 69A	₹ 16,73,500/-
2	Unexplained money u/s 69A	₹ 2,50,000/-
3	Unexplained money u/s 69A	₹ 7,00,000/-
4	Unexplained money u/s 69A	₹ 37,45,500/-
5	Unexplained money u/s 69A	₹ 71,93,666/-

6	Unexplained money u/s 69A	₹ 22,50,000/-
7	Unexplained money u/s 69A	₹ 3,53,000/-
8	Unexplained money u/s 69A	₹ 26,00,000/-
9	Unexplained Expenditure u/s 69C	₹ 10,00,000/-

The assessee being unsuccessful before the Assessing Officer, challenged the assessment order passed by the Assessing Officer by filing appeal before the first appellate authority challenging the additions, except the addition for ₹ 3,53,000, as per serial no.7 above.:-

1	Unexplained money u/s 69A	₹ 16,73,500/-
2	Unexplained money u/s 69A	₹ 2,50,000/-
3	Unexplained money u/s 69A	₹ 7,00,000/-
4	Unexplained money u/s 69A	₹ 37,45,500/-
5	Unexplained money u/s 69A	₹ 71,93,666/-
6	Unexplained money u/s 69A	₹ 22,50,000/-
7	Unexplained money u/s 69A	₹ 26,00,000/-
8	Unexplained Expenditure u/s 69C	₹ 10,00,000/-

4. On appeal, the assessee, before the learned CIT(A), has made elaborate submissions which were reproduced in the order passed by the learned CIT(A). The learned CIT(A) considering the submissions of the assessee granted full relief.

5. The Revenue being aggrieved is in appeal before the Tribunal by raising such additions which were directed to be deleted by the learned CIT(A). The additions which are under challenge by the Revenue before the Tribunal are as under:-

- i) Ground no.1, – Addition of ₹ 16,73,500, on account of unexplained money under section 69A of the Act;*
- ii) Ground no.2, – Addition of ₹ 2,50,000, on account of unexplained money under section 69A of the Act;*
- iii) Ground no.3, – Addition of ₹ 7,00,000, was made on account of difference between agreement to sale value and final sale deed value which has been framed as unexplained money under section 69A of the Act;*
- iv) Ground no.4, – Addition of ₹ 37,45,500, being unexplained money under section 69A of the Act;*
- v) Ground no.5, – Addition made of ₹ 71,93,600, being unexplained money under section 69A of the Act;*
- vi) Ground no.6, – Addition made of ₹ 22,50,000 being unexplained money under section 69A of the Act;*
- vii) Ground no.7, – Addition made of ₹ 26,00,000, being unexplained money under section 69A of the Act; and*
- viii) Ground no.8, – Addition made of ₹ 10,00,000, being unexplained expenditure under section 69C of the Act.*

6. Before us, the learned Departmental Representative ("*the learned D.R.*") opened up his arguments by vehemently assailing the impugned order by submitting that the additions are based on the documentary evidences which were unearthed during the course of search. This clearly represented undisclosed income and the learned CIT(A) had fallen into error in allowing the impugned additions. He prayed that the assessment order be restored in its entirety.

7. The learned Counsel appearing for the assessee, per-contra, reiterated the submissions made before the authorities below. However, for the sake of brevity and convenience, we reproduce the written submissions made by the learned Counsel for the assessee which are as follows:–

"1. The agreement to sale documents are drafted under the instruction of various customers of assessee's in discharge of his professional duty / obligation. When a document shows a fixed price, there would be a presumption that it is the correct price agreed upon by the parties. It is true that on the basis of the agreement, the sale deed is executed, in such cases the agreement to sale must be registered. But in the said case the agreement to sale is unregistered and in the case of unregistered agreement to sale it is not necessary that the price stated in the agreement will be the price shown in the sale deed. No addition is tenable in view of non-availability of the corroborative evidence. It is necessary to bring some corroborative evidences on record before making the addition against the assessee. The sale deed clearly shows that amount is paid to the assessee through banking channel only and thus, the contents of sale deed cannot be disregarded. Merely having deviation in agreement to sale and sale deed amount cannot be presumed to be receipt of on money by the assessee and ought not have been added to the total income of the assessee.

2. There cannot be addition u/s 69A stating the same to be undisclosed income of the assessee.

Sec 69A provides for unexplained money". The verbatim Sec 69A is reproduced below for your kind perusal as follows:-

"Where in any year the taxpayer is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the taxpayer offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, than the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the taxpayer for such year."

Sec 69A categorically provides that where a taxpayer is found to be "the owner of any money; bullion, jewellery or other valuable article". In simple terms there shall be some tangible item present in form of money i.e. hard cash, bullion, jewellery or other valuable article.

It is most humbly submitted that ownership is one of the major Considerations for making addition under Section 69A dealing with money, etc., owned by the assessee and found in his possession.

In the instant case, there has been no money, bullion found during the search and survey action. Neither jewellery or valuable items found from possession of the assessee, nor it is found the assessee is the owner of any kind of money, bullion, jewellery etc. The limbs of Sec 69A is not getting satisfied at all.

Addition u/s 69A can only be made when the assessee found to be in possession of money, bullion, jewellery, etc. not recorded in the books of accounts of the assessee.

Further, whatever documents are found are loose papers and dumb documents. No reliance can be placed on such loose papers

Therefore, in the present case the addition which is not premised on any cash, bullion, jewelry or other valuable item but is purely based on some vague noting cannot be a source for making additions under Sec 69A of the Income Tax Act, 1961.

- 1. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition. No addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has received on-money from customers over and above the sale deed. Noting on the note book/diary/loose sheets are required to be supported/corroborated by other evidence and should also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties.*
- 2. In the case of assessee the Assessing Officer had not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by assessee outside the books of account to match with the figures of difference appearing in loose sheet. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition.*
- 3. The A.O.'s examination was very casual and not based either on the possible further enquiries or workings or on the appreciation of statements and change in the status of several flats & owners. He has just made a one sided assessment based only on the loose sheet without bringing on record the other corroborative evidences. The addition made by the Assessing Officer based on the loose paper, which is not conclusive evidence and, therefore, the same is not sufficient to make the addition.*
- 4. The addition has been made merely on the basis of this loose paper without any corroborating evidence and on conjecture and surmises. Therefore, the presumption u/s. 292C of the Act is a rebuttable presumption. The presumption as envisaged in section 292C is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to be presumed to be the income of the assessee.*
- 5. With the back drop of facts and legal position, the impugned seized loose paper bundle is undated, not in handwriting of any of the partners of the firm, impounded scribbings contains incorrect facts as to the area of flats as compared to actual sale deed, have no acceptable narration and do not bear the signature of the any of the partners or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as sole basis for determination of undisclosed income of the assessee. No addition ought to be made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers. It was further stated that t the loose*

papers based on which the Ld AO has made the addition are merely projections and cannot partake the character of undisclosed income of the assessee without any further evidences.

6. Also, During post search enquiries, The Deputy Director of Income Tax (Investigation) had called for information from customers and cross-examined whose agreement to sale was found or whose notings were found on loose paper during search and seizure. Statement of all the "customers" of assessee were recorded by the Deputy Director of Income Tax (Investigation) wherein they had stated that all the payments were made as per sale deed and no cash has been paid over and above the agreed sale consideration as per sale deed. Thus, the cross examination of all customers had been done to ascertain whether the payment of "on money" was made by them or not which had been clearly denied by all the customers. Hence, no additions ought to have been made without considering the statements of the customers given to Deputy Director of Income Tax (Investigation).

7. Also, in the instant case the Assessing officer had presumed that the Difference amount is received on-money by assessee without any corroborative evidence.

Prayer : In view of above the Order passed by Commissioner of Income Tax (Appeals) may be upheld.

Ground No. 7 : Addition made of Rs. 26,00,000/- being unexplained money u/s 69A of the Act.

A.O. – Para 10 – Page No. 57 to 58

CIT (A) Page No. 130 to 132

The addition to total income of Rs. 26,00,000/- has been made on account of document found and impounded from the business premises of M/s Tirupati Developers framed as unexplained money u/s 69A as per Para 10 of Assessment order.

The transactions are duly accounted in the books of Tirupati Developers through the capital account of Shri Prashant Bongirwar, the common partner in both the firms. The assessee had mentioned the same during the assessment proceedings but had not been considered by the learned A.O while passing the assessment order and addition of Rs. 26,00,000/- was made to the income of the assessee. The assessee is enclosing herewith the Capital account of Shri Prashant Bongirwar the common partner in M/s. Tirupati Developers and the assessee firm, where the entries are accounted.

Ground No. 8 : Addition made of Rs. 10,00,000/- being unexplained expenditure u/s 69C of the Act.

A.O. – Para 10 – Page No. 58

CIT (A) Page No. 132 to 133

The addition to total income of Rs. 10,00,000/- has been made on account of document found and impounded from the business premises of M/s Tirupati Developers framed as unexplained expenditure u/s 69C as per Para 10 of Assessment order. The transactions are duly accounted in the books of Tirupati Developers through the capital account of Shri Prashant Bongirwar, the common partner in both the firms. Hence, no addition ought to have been

made on account of unexplained expenditure by the assessee. The assessee had mentioned the same during the assessment proceedings but had not been considered by the learned A.O while passing the assessment order and addition of Rs.10,00,000/- was made to the income of the assessee.

The Assessing Officer ignored the reply submitted by assessee while passing the assessment order.

It is submitted that under section 69C, the burden squarely lies on the Revenue to establish that the assessee had made alleged payments so as to warrant addition under section 69C of the Act. It was submitted that the burden of proof had not been discharged by the Revenue by leading any material, what so ever, and thus, the addition so made needed to be deleted.

8. The learned Counsel for the assessee in support of his arguments placed reliance on the series of case laws which are as follows:-

1. *Hon'ble Kerla High Court Order in the case of Bhasy vs Thoman, where reference was taken from Prem Singh V. Birbal [2006 (2) KLT 863 (SC)] the Apex Court held that there is a presumption that a registered document is validly executed.*

2. *Hon'ble Calcutta High Court in the case of Durga Kamal Rice Mills vs CIT(paper book page no.30) it was observed that Section 69A deals with unexplained money of which the assessee is found to be the owner. The material difference between sections 68 and 69A is that section 68 does not require that the amount is to be owned by the assessee. It only deals with any amount shown in the books of account of the assessee. Whereas section 69A deals with money, etc., owned by the assessee and found in his possession. Therefore, ownership is one of the considerations when the matter comes under section 69A.*

3. *Hon'ble Punjab-Haryana High Court in the case of CIT vs Ravikumar (paper book page no.33) it was held that the assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither the possession nor the ownership of any jewellery mentioned in the slips could prove. In view thereof, the provisions of Section 69A of the Act had rightly not been applied by the Tribunal to the facts of the case in hand. Accordingly, question No. 1 is answered against the Revenue and in favour of the assessee.*

4. *Hon'ble Delhi High Court Order in the case of CIT vs, Jai Pal Aggarawal (paper book page no.9)it was held that the seized document which is to be treated as dumb document, the addition cannot be justified.*

5. *Hon'ble ITAT New Delhi in ITA No. 933/Del/2012, ACIT vs. Shri Sharad Choudhary(paper book page no.14) it was observed that coming to the legal position as to the person/party on whom the burden lies to refute the facts recorded in a document, in my considered view, in a case where AO is of the view that the assessee's explanation is not acceptable or satisfactory*

regarding the contents of the document seized from his premises/possession (the notings being unintelligible and cryptic in nature) then the burden to substantiate or prove the contents of the document shifts over to the person who is making such assertion, that is the assessing officer in this case.

6. Hon'ble ITAT Jaipur in the case of Shri Ganpati Developers Kota vs ACIT(paper book page no.50,51) it was observed that the A.O. has not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by the assessee outside the books of accounts to match with the figures of difference appearing in the loose sheet. In fact he did not even cross check with the partner Sh. Anil Mundra & others regarding the same to establish any difference in their version given at the time of search.

7. Hon'ble Delhi High Court Order in the case of CIT vs. S. M. Aggarwal(paper book page no.58) it was held that the documents recovered during the course of search from the assessee are dumb documents and there are concurrent findings of Commissioner of Income Tax (Appeals) and the Tribunal to this effect. Since the conclusions are essentially factual, no substantial question of law arises for consideration.

8. Hon'ble ITAT Jaipur in the case of Shri Ashok Dharendra vs. DCIT (paper book page no.98,99) it was held that the addition is made on mere conjecture and surmises without any corroborative material. It is a settled law that the presumption whosoever strong may be but it cannot take place of proof and thus the A.O. has acted more on suspicion and doubt than on evidence. It is settled principle of law that suspicion however strong cannot take the place of evidence. In following cases it has been time and again held that suspicion howsoever cannot take place of evidence. The AO has interpreted a dumb document having no legal validity as per his suitability and addition based on this paper deserves to be deleted more particularly when the paper itself contained errors and addition is made merely and solely on the basis of confession without any corroborative evidence. Moreover the said confession made by the assessee was subsequently retracted and since the addition was not supported by any cogent, convincing independent documentary evidence, therefore, considering the totality of facts and circumstances, judicial precedents referred above as well as following the decision of the Coordinate Bench of this Tribunal in the case of DCIT Vs. 72 ITA 256/JP/2018 JKD Pearl India Developers Pvt. Ltd.(supra) wherein the present Author of this order was also the Author of that order, therefore, we direct the A.O. to delete the addition so made.

9. Hon'ble ITAT New Delhi in the case of Samta Khinda vs ACIT (paper book page no.106) it was held that The addition has been made merely on the basis of this loose paper without any corroborating evidence and on conjecture and surmises. Therefore, the presumption u/s. 292C of the Act is a rebuttable presumption. The presumption as envisaged in section 292C is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to be presumed to be the income of the assessee.

10. Hon'ble ITAT Mumbai in the case of Kranti Impex Pvt. Ltd. vs ITO (paper book page no.136) it was held that since the impugned seized papers

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

11. Hon'ble ITAT Hyderabad in the case of Smt. K.V. Lakshmi Savitri Devi vs ACIT (paper book page no.143) it was held that the basis for addition cannot be only the loose sheet or a third party statement. In the absence of corroborative material, circumstantial evidence, we are not in a position to sustain the addition. In our opinion, no addition can be made on a dumb document and noting on loose sheet. It should be supported by the evidence on record and the evidence on record is not sufficient to support the Revenue's action.

12. Hon'ble Supreme Court of India in the case of CIT vs P.V. Kalyanasundaram (paper book page no.147) it was observed that the notings on the loose pieces of paper on the basis of which the initial suspicion with regard to the under valuation had been raised were vague and could not be relied upon as it appeared that the total area with respect to the sale deeds and that reflected in the loose sheet was discrepant.

13. Hon'ble Punjab-Haryana High Court in the case of CIT vs M/s. Atam Valves (P) Ltd. (paper book page no.150) it was held that in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the Assessing Officer.

14. Hon'ble ITAT Hyderabad in the case of Nagarjuna Construction Co. Ltd. vs DCIT (paper book page no.180) it was held that the basis for addition is only note book/loose slips. These note book/loose slips are unsigned documents. The assessing officer has not established nexus between the note book/loose slips with actual accrual/ receipt of interest. The note book/loose slips seized marked A/NCCL-1/1 found during the course of search is a dumb document having no evidentiary value, no addition can be made in the absence of corroborative material. If there is circumstantial evidence in the form of promissory notes, loan agreement and bank entries, the addition is to be made on that basis to the extent of material available. The assessee is not expected to explain the loose papers found as there is no evidence other than

note book/loose slips regarding accrual of interest. In our opinion, no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has carried on money lending business. Noting on the note book/diary/loose sheets are required to be supported/ corroborated by other evidence and are also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. In the present case, undoubtedly no statement from the parties whose names found in the note book/loose slips has been brought to our notice and as such entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search is not possible.

15. *Hon'ble Delhi High Court Order in the case of CIT vs. D.K. Gupta (paper book page no.182) it was observed that the diaries found with the assessee contained various reminders, appointments, notings / jottings which any businessman in normal course would make note of in respect of offers received and what he intends to look into. The tribunal was of the view that merely because there were notings of offers does not mean that the transactions had actually taken place. The tribunal noted that in such a situation, the burden shifted on the revenue to prove that the replies filed by the assessee were not correct and that the notings / jottings had resulted into income which had not been disclosed in the regular books of accounts. The tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings / jottings had materialised into transactions giving rise to income not disclosed in the regular books of accounts.*

16. *Hon'ble Delhi High Court Order in the case of CIT vs. Shri Girish Choudhary(paper book page no.186) it was held that the document Annexure A-37 recovered during the course of search in the present case is a dumb document and lead us nowhere. Thus, the Tribunal rightly deleted the addition of Rs. 48 lacs made by the Assessing Officer on account of undisclosed income on the basis of seized material.*

17. *Hon'ble Delhi High Court Order in the case of CIT vs. Atul Kumar Jain (paper book page no.210)it was held that This addition is also based on the impugned piece of paper seized during the course of search. On the right hand side in the said paper, there is an entry of "550" with a narration "flat". There is no detail recorded of the purchase of any flat nor there are any details recorded of the sale consideration paid in the said paper. The assessing officer however, decided "550" as 5,50,000 by adding "000" to the figure given "550,.'. Here also there is no basis given for reading the figure "550" as Rs. 5,50,000. There is also no supporting or corroborative evidence for treating the figure "550" as Rs. 5,50,000. Moreover, we have already considered and given a finding above that the said paper was neither a document nor a book of account and accordingly no reliance could be placed thereon without any supporting or corroborative evidence which the Revenue failed to bring on record.*

18. *Hon'ble Delhi High Court Order in the case of CIT vs. Anil Bhalla (paper book page no.3) it was held that no independent material or evidence had been brought on record by the Assessing Officer to establish that the notings/jottings recorded on the loose sheet of paper represented an unaccounted transaction.*

19. *Hon'ble Karnataka High Court Order in the case of Deputy Commissioner of Income Tax vs. Sunil Kumar Sharma reference has been taken at para 26 of the Order that "It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent/Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."*

9. We have given a dispassionate consideration to the arguments made by the rival parties and perused the material available on record thoroughly along with the impugned orders.

10. Insofar as ground no.1 is concerned, which relates to the addition made of ₹ 16,73,500, on account of unexplained money under section 69A of the Act, the Assessing Officer has dealt with this issue vide assessment order at Para-3 / Page-38 to 40 wherein the Assessing Officer has made addition. On appeal by the assessee, the learned CIT(A) directed to delete the addition vide Page-114 to 116 of his order. The addition aggregating to ₹ 16,73,500, was made on account of difference between agreement to sale value and final sale deed value which has been framed as unexplained money under section 69A, as per Para 3 of assessment Order. We find that the document exhibited at B/36, as referred to in said Para contained details regarding agreement to sale and final sale deed with respect to Flat no.104, "B" Wing of

Kanyakapuran Project of the assessee. During the course of assessment proceeding, the assessee had stated that on the request of customer agreement to sale were prepared for ₹ 36,73,500, so that the customer can avail maximum possible housing loan amount. The agreement to sale was not registered. The same was stated by Shri Prashant Bongirwar, Partner of the assessee firm in his statement given to the Dy. Director of Income Tax (Investigation). However, subsequent to this, the customer informed assessee regarding non-eligibility for higher loan amount. Therefore, customer requested the assessee to execute sale deed for actual agreed consideration of ₹ 20,00,000, and not as per the agreement to sale value. We further find that the assessee had mentioned the same during the assessment proceedings, but the same was not been considered by the Assessing Officer while passing the assessment order and resultantly the addition of ₹ 16,73,000, was made to the income of the assessee. The learned Departmental Representative could not bring any material or evidence to take a view other than the view taken by the learned CIT(A). The evidentiary value of registered sale deed cannot be dislodged whimsically. Hence, keeping this in view, we do not find any infirmity in the impugned order passed by learned CIT(A) which is hereby upheld by deleting the addition. Ground no.1, raised by the Revenue is hereby dismissed.

11. With regard to ground no.2, which relates to the addition of ₹ 2.50 lakh being unexplained money under section 69A of the Act, while going through the assessment order, we find that the Assessing Officer has dealt with this issue at Para-4 / Page-40 to 42, of the assessment order wherein the

Assessing Officer made addition. However, the learned CIT(A) deleted such addition and made his observations in the impugned order. The addition to total income of ₹ 2.50 lakh was made on account of difference in value between agreement to sale and final sale deed which has been added as unexplained money under section 69A of the Act as per Para-4 of Assessment Order. We further find that the document exhibited at B-1/5 as referred to in said Para contained details regarding agreement to sale and final sale deed with respect to Flat no.102 in "B" Wing of Kanyakapuran Project of the assessee. During the course of assessment proceeding, the assessee had stated that on the request of customer agreement to sale were prepared for ₹ 27.50 lakh, so that the customer can avail maximum possible housing loan amount. The same was stated by Shri Prashant Bongirwar, Partner of the assessee firm, in his statement given to the Dy. Director of Income Tax (Investigation). However, later on, the customer informed the assessee regarding non-eligibility for higher loan amount. Therefore, customer requested the assessee to execute sale deed for actual agreed consideration of ₹ 25.00 lakh and not as per the agreement to sale value. During the course of hearing, the learned Counsel for the assessee had submitted that the assessee had mentioned the same during the assessment proceedings, but the Assessing Officer had not considered the same while passing the assessment order and the addition of ₹ 2.50 was made to the income of the assessee. The customer was not cross-examined at any point of time to dislodge the assessee's submissions. The learned D.R. could not bring any corroborative material or evidence to controvert the submissions so made by

the learned Counsel for the assessee to enable this Bench to take a view other than the view taken by the learned CIT(A). Hence, keeping this in view, we find no infirmity in the impugned order passed by the learned CIT(A) is hereby upheld by deleting the addition. Ground no.2, raised by the Revenue is hereby dismissed.

12. As far as ground no.3, which relates to the addition of ₹ 7 lakh being unexplained money under section 69A of the Act is concerned, we find that the Assessing Officer made the addition while dealing with this issue at Para-5 / Page-42 to 47 of the assessment order. The learned CIT(A) directed to delete the addition vide Page no.118 of the impugned order. The addition to total income of ₹ 7 lakh was made on account of difference between agreement to sale value and final sale deed value which has been framed as unexplained money under section 69A as per Para-5 of assessment order. While going through the record, we find that the document exhibited at B-1/16, as referred to in said Para contained details regarding agreement to sale and final sale deed with respect to Flat no.202 in "A" Wing of Kanyakapuran Project of the assessee. It was stated by the learned Counsel for the assessee that during the course of assessment proceeding, the assessee had stated that on the request of customer, agreement to sale were prepared for ₹ 25 lakh so that the customer can avail maximum possible housing loan amount. The same was stated by Shri Prashant Bongirwar, Partner of the assessee firm in his statement given to Dy. Director of Income Tax (Investigation). But subsequently, the customer informed the assessee regarding non-eligibility for higher loan amount and therefore, the customer

requested the assessee to execute sale deed for actual agreed consideration of ₹ 18 lakh and not as per the agreement to sale value. It was stated by the learned Counsel that the assessee had mentioned the same during the assessment proceedings, however, the Assessing Officer did not consider the same while passing the assessment order which resulted in addition of ₹ 7 lakh and was added to the total income of the assessee. The learned Departmental Representative could not bring any corroborative material or evidence to controvert the submissions of the assessee to enable this Bench to take a view other than the view taken by the learned CIT(A). Hence, we do not have any scope to reverse the impugned order passed by the learned CIT(A). Accordingly, since there is no infirmity in the impugned order passed by the learned CIT(A) the same is hereby upheld by deleting the addition. Ground no.3, raised by the Revenue is hereby dismissed.

13. Ground no.4, raised by the Revenue relates to the addition of ₹ 37,45,500, being unexplained money under section 69A of the Act. During the course of hearing, the learned Counsel for the assessee invited our attention to Para-6 / Page-47 to 48 of the assessment order, wherein the Assessing Officer has made addition. However, we find that the learned CIT(A) has directed to delete the addition. The learned Counsel for the assessee stated that the addition to total income of ₹ 37,45,500, was made on account of difference between total flat cost and agreement/sale deed value framed as undisclosed income under section 69A of the Act as per Para-6 of Assessment Order. We further find that the document no.B-2/1 as referred to in said Para contains papers having details of enquiry of bookings prepared by marketing

executive. The executive explains the total cost to be incurred by the customer to make the flat ready for occupation. The actual cost of flat mentioned by the executive was an estimate of the total cost to be borne by the customer in order to make the flat ready for occupation. The amount mentioned in the loose paper was not the sale value of flat. The final sale value is negotiated with the customer by the assessee and it is decided accordingly by mutual consent with the assessee. The details mentioned in the loose papers is compared with the actual transactions and sale deed executed the difference is as follows:-

Page No.	Name of Customer	Flat No.	Area as per loose Paper Sq. Ft.	Area as per Sale Deed Sq. Ft.	Diffn in Area	Rate as per loose paper	Sale Deed Amount	Amount Considered in Order
1	2	3	4	5	6	7	8	9
68 Back	Rajesh Modhak	404-A		766.08			2200000	2000000
63	Mahesh Ramdohkar	305	950	766.08	183.92	3100	2125000	1500000
60	Rajendra Singh	703-A	1250	756.97	493.03	3161	3500000	3500000

14. If the area mentioned in the sale deed as per col.5 is compared with area mentioned in the loose paper as per col.4, the area as per sale deed is much less than the area as per loose paper. The difference in area is mentioned in col. 6 of the above chart. It can also be seen that the sale consideration as per sale deed mentioned in col.8 is higher than the sale consideration mentioned in the loose papers mentioned in col.9. The chart prepared by the Assessing Officer at Para-6 of the assessment order is produced below:-

Page no.	Name of the purchaser	Flat no.	Total Flat Cost	Agree-ment Value	Difference	Date of Sale Deed	F.Y.
68	Shri	B/604	3478800	3000000	478800	07.04.2017	2017-18

	<i>Umesh Wao</i>					<i>Annex-(B-27)</i>	
<i>68 Back</i>	<i>Shri Rajesh Modak</i>	<i>A/404</i>	<i>3847500</i>	<i>2000000</i>	<i>1849500</i>	<i>05.08.2016 Annex-(B-1-20)</i>	<i>2016-17</i>
<i>63</i>	<i>Shri Mahesh J. Ramdohkar</i>	<i>305</i>	<i>2945000</i>	<i>1500000</i>	<i>1445000</i>	<i>01.03.2017 Annex-(B-1-24)</i>	<i>2016-17</i>
<i>60</i>	<i>Shri Rajendra Singh</i>	<i>A/703</i>	<i>3951000</i>	<i>3500000</i>	<i>451000</i>	<i>16.12.2016 Annex-(B-1-27)</i>	<i>2016-17</i>
	<i>Total</i>	<i>F.Y. 2016-17</i>		<i>37,45,500</i>			
		<i>F.Y. 2017-18</i>		<i>4,78,800</i>			

15. We further find that the Assessing Officer has considered the total Flat cost as per the loose papers. The Assessing Officer has also mentioned the date of Sale Deed and the impounded document respective Sale Deed shown in the chart above, however, the Assessing Officer has not even verified the sale consideration as per the Sale Deeds which were impounded and just casually made addition on the basis of difference in total Flat cost and agreement value as per loose papers. From this, it is clear that the loose papers are prepared on estimates only. The notings in the loose papers are not matching with the actual transactions and cannot be relied upon. The assessee had mentioned the same during the assessment proceedings but had not been considered by the Assessing Officer while passing the assessment order and resultantly the addition of ₹ 37,45,500, was made to the income of the assessee. The learned Departmental Representative could not make any effective arguments to counter the arguments made by the learned Counsel for the assessee to enable this Bench to reverse the impugned order. We, therefore, see no legal infirmity in the impugned decision of the learned CIT(A) warranting interference at the instance of the

Revenue. Accordingly, upholding the impugned order passed by the learned CIT(A), we dismiss ground no.4, raised by the Revenue.

17. Insofar as ground No.5 is concerned, the issue relates to the addition made of ₹ 71,93,666, being unexplained money under section 69A of the Act. While going through the material available on record, we find that the Assessing Officer has dealt with this issue in the assessment order at Para-7 / Page-49 & 50, wherein he made the said addition. The learned CIT(A), however, directed to delete the said addition. The addition of ₹ 71,93,666, has been made on account of notings framed as unexplained money under section 69A of the Act as per Para-7 of Assessment Order. We further noticed that the document no.B-2/19 mentioned in said Para contained notings made by office staff on daily basis regarding work done or to be done by them. The said pages contained notings by the staff about their day to day working and were not in the knowledge of the assessee. As could be seen, the exhibited Document no.B-2/19 as furnished before us, which is a diary of the calendar year 2014, maintained by the office staff. If the said document is verified carefully, it can be found that the notings are rough notings regarding remainders, work to be done, MSEB meter demand, VAT, Service Tax, Maintenance, extra work to be done, etc. The dates on the pages of diary are taken and presumed as the dates of calendar year 2016. But the notings on Page-1, i.e. of 1st January are considered as the notings of 04/10/2016, where the date mentioned is "as on 04/10/2016". Hence, it can be concluded as the notings in the diary are rough and vague notings and cannot be relied upon. Hence, in our considered opinion, no addition ought to have been made

on account of amount mentioned on loose paper. The assessee had mentioned the same during the assessment proceedings but the Assessing Officer failed to consider the same while passing the assessment order and resultantly the addition of ₹ 71,93,666, was made to the income of the assessee. We find that the assessee has enclosed therewith the photocopy of Document exhibited at B-2/19, and the same entries are reconciled in the books of account and yet the addition was made. Addition to the income cannot be made by the Assessing Officer based on the dumb documents, loose paper containing scribbling, rough/vague notings in the absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had not been disclosed in the regular books of account by the assessee. No effective arguments could be made by the learned Departmental Representative to rebut the arguments of the learned Counsel for the assessee. Thus, keeping in view the foregoing discussion, we uphold the order passed by the learned CIT(A) by dismissing ground no.5, raised by the Revenue.

18. With regard to ground no.6, the issue for our adjudication relates to the addition made of ₹ 22.50 lakh being unexplained money under section 69A of the Act. This addition was made on account of notings framed as unexplained money under section 69A as per Para-8 of Assessment Order. At Page-15 of document exhibited at B-2/21, contains merely rough notings. The amount mentioned in this loose paper is not the actual sale value of the flat. The actual sale value is negotiated with the customer and it is decided

accordingly. No addition ought to be made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers. Hence, no addition ought to have been made on account of amount mentioned on loose paper. The assessee had mentioned the same during the assessment proceedings, but had not been considered by the learned Assessing Officer while passing the assessment order and the addition of ₹ 22.50 lakh was made to the income of the assessee. In the above grounds, grounds no.1 to 6, the Assessing Officer made addition relying on the dumb documents, loose paper containing scribbling, rough/vague notings in the absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by the assessee. Further, the additions made in above grounds, i.e. grounds no.1 to 6 are on the basis of On-Money received from the customers by the assessee. There was no action taken on the customers as after receiving summons under section 131 of the Act from the Investigation Department, the customers have categorically denied having paid any cash amount as on-money to the assessee. The Revenue has accepted their reply, but added the same amount in the income of the assessee without accepting its explanation. We further find that the addition was made on the basis of impounded documents, as the Assessing Officer had not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by assessee outside the books of account to match with the figures of difference appearing in loose sheet. Further, the Assessing Officer's

examination was very casual and not based either on the possible further enquiries or workings. No effective arguments were made to counter the arguments of the learned Counsel for the assessee. Accordingly, we do not find any infirmity in the impugned order passed by the learned CIT(A) which forces us to take a view other than the view taken by the learned CIT(A). Hence, the impugned order passed by the learned CIT(A) is hereby upheld by dismissing the ground no.6, raised by the Revenue. At this juncture, we gainfully rely upon Their Lordships' observation in DCIT v/s Sunil Kumar Sharma, [2024] 159 taxman.com 179 (Kar.), contained in Para-21 to 26 as referred to below:-

"21. Both the Appellant-Revenue and Respondent-Assessee entered appearance and submitted their arguments extensively. On hearing the learned counsel for both the parties, this Court finds it relevant to examine the following questions that arises for consideration in these writ appeals, which are as under:

- 1) Whether 'Loose Sheets' and 'Diary' have any evidentiary value?*
- 2) Whether Centralization is in violation of Section 127 of the Income Tax Act, 1961, is valid?*
- 3) Whether the Notice under Section 153C of the Income Tax Act, 1961 is valid herein?*

As regards Question No.1:

Upon reading the material provided and the order of the learned Single Judge delivered on 12.08.2022, it is evident that the income that has escaped assessment and notices under Section 153C of the Income Tax Act, 1961, were solely issued based on loose sheets and documents which are termed as 'diaries' found during the search.

The applicability of Section 69A of the Act arises only when the principles laid down under Section 68 of the Act are satisfied.

Section 68 states that there must be books of accounts or any books with credit entry. The said Act reads thus:

"Section 68: Where any sum is found credited in the books of an assessee maintained for any previous years and the assessee offers no explanations about nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the

sum so credited may be charged to income tax as the income of the assessee of that previous year."

The language of the Law is vague and subjective, thus making us rely on an Apex court decision in the case of CBI vs. V.C. Shukla ((1998) 3 SCC 410), wherein the relevant portion reads thus:

"Collection of sheet fastened or bound together so as to form material whole. Loose sheets or scraps of paper cannot be termed as books."

In this regard, it is relevant to extract Section 69A of the Act, which reads thus:

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

The lack of corroborative evidence to show how the loose sheets found at the house of Sri K Rajandran are connected to the Respondents herein, or their occupation, is evident from the panchanama provided by the Assessing officer.

22. The entire allegation is made out on the basis of loose sheets of documents, which does not come under the ambit and scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of CBI Vs. VC SHUKLA (MANU/SC/0168/1998), at paragraphs 16 to 18 of the judgment, it is observed thus:

"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact is relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:- "34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

17. 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 alone 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 part 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.

18. "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."

24. The aforesaid approach is in accordance 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)."

25. The Hon'ble Supreme Court in the case of *COMMON CAUSE AND OTHERS v. UNION OF INDIA*, reported in (2017) 11 SCC 731, at paragraphs 278 to 282 of the judgment, has observed thus:

"278. With respect to the kind of materials which have been placed on record, this Court in *V.C. Shukla* case has dealt with the matter though at the stage of discharge when investigation had been completed by

same is relevant for the purpose of decision of this case also. This court has considered the entries in Jain Hawala Diaries, note books and file containing loose sheets of papers not in the form of "books of accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in V.C. Shukla case as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in V.C. Shukla that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-27, paras 14 and 20) "14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words:

"70.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 abreviated 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." 20. 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'.

281. With respect to evidentiary value of regular account book, this Court has laid down in *V.C. Shukla*, thus: (SCC p.433, para 37) "37. In *Beni Vs. Bisan Dayal* [A. I. R 1925 Nagpur 445] it was observed 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 Vs. Ram Rakha* [A. I. R. 1953 Pepsu 113] the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, 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.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 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 this Court."

26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the action taken by the respondent / Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under Section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

19. Regarding ground no.7, raised by the Revenue, which relates to the addition under section 69A of the Act of ₹ 26 lakh on account of unexplained money, the Assessing Officer dealt with the issue vide Para-10 at Page-57 & 58 by making addition of ₹ 26 lakh. He stated that on verification of the material he found that the assessee has received ₹ 26 lakh for which no proper explanation was submitted by the assessee and hence, the same is treated as undisclosed cash receipts by the assessee and treated as unexplained money under section 69A of the Act which was added to the total income of the assessee. Before us, the learned Departmental Representative could not make any effective arguments on this ground. Even he could not adduce any corroborative material rebutting the decision of the learned CIT(A). The learned Counsel for the assessee in support of its claim reiterated the arguments made before the authorities below and prayed that the order of the learned CIT(A) be upheld on this count. The addition to total income of ₹ 26 lakh was made by the Assessing Officer on account of document found and impounded from the business premises of M/s.Tirupati Developers, which was framed as unexplained money under section 69A as per Para-10 of Assessment order. We find that the transactions are duly accounted in the books of Tirupati Developers through the capital account of Shri Prashant Bongirwar, the common Partner in both the firms. The assessee had mentioned the same during the assessment proceedings, but had not been considered by the Assessing Officer while passing the assessment order and addition of ₹ 26 lakh was added to the income of the assessee. We also find that the assessee has furnished copy of Capital Account in respect of Shri

Prashant Bongiwari, who also said to be a common Partner in M/s. Tirupati Developers, and the assessee firm, where the entries are accounted. Thus, we are unable to reverse the order passed by the learned CIT(A) and thus decline to interfere. The impugned order passed by the learned CIT(A) is hereby upheld by dismissing the ground no.7, raised by the Revenue.

20. Ground no.8, relates to the addition of ₹ 10 lakh, being unexplained expenditure under section 69C of the Act.

21. The Assessing Officer made addition by holding that the assessee made repayment in cash of ₹ 10,00,000, for which no source was available with the assessee and the same was treated as unexplained expenditure under section 69C of the Act. Before us, the learned Departmental Representative relied upon the order passed by the Assessing Officer. The learned Counsel for the assessee assailing the assessment order passed by the Assessing Officer, reiterated the submissions made before the authorities below and prayed that the order passed by the learned CIT(A) be upheld. The learned Counsel further submitted that the Assessing Officer ignored the reply submitted by the assessee while passing the assessment order. The addition to the total income of ₹ 10 lakh was made on account of document found and impounded from the business premises of M/s. Tirupati Developers framed as unexplained expenditure under section 69C of the Act as per Para-10 of assessment order. The transactions are duly accounted in the books of Tirupati Developers through the Capital Account of the common partner in both the firms. Hence, no addition ought to have been made on account of

unexplained expenditure by the assessee. The assessee had mentioned the same during the assessment proceedings also, but the Assessing Officer did not consider the same which resulted in addition of ₹ 10 lakh. Even otherwise also, we find that the burden squarely lies on the Revenue to establish that the assessee had made alleged payments so as to warrant addition under section 69C of the Act. In fact, the Revenue failed discharge the said burden. In view of the this, since there remains no scope to reverse the order, we decline to interfere with the order passed by the learned CIT(A). Thus, ground no.8, raised by the Revenue is dismissed.

22. Grounds no.9, 10 and 11, are directed towards whether loose sheets are admissible as evidences on the basis of which the addition is sustainable. Their Lordships of the Hon'ble High Court of Karnataka have dilated on the issue in Sunil Kumar Sharma (supra), the relevant portion of the said judgment is reproduced below:-

"21. Both the Appellant-Revenue and Respondent-Assessee entered appearance and submitted their arguments extensively. On hearing the learned counsel for both the parties, this Court finds it relevant to examine the following questions that arises for consideration in these writ appeals, which are as under:

- 1) Whether 'Loose Sheets' and 'Diary' have any evidentiary value?*
- 2) Whether Centralization is in violation of Section 127 of the Income Tax Act, 1961, is valid?*
- 3) Whether the Notice under Section 153C of the Income Tax Act, 1961 is valid herein?*

As regards Question No.1:

Upon reading the material provided and the order of the learned Single Judge delivered on 12.08.2022, it is evident that the income that has escaped assessment and notices under Section 153C of the Income Tax Act, 1961, were solely issued based on loose sheets and documents which are termed as 'diaries' found during the search.

The applicability of Section 69A of the Act arises only when the principles laid down under Section 68 of the Act are satisfied.

Section 68 states that there must be books of accounts or any books with credit entry. The said Act reads thus:

"Section 68: Where any sum is found credited in the books of an assessee maintained for any previous years and the assessee offers no explanations about nature and source thereof or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

The language of the Law is vague and subjective, thus making us rely on an Apex court decision in the case of CBI vs. V.C. Shukla ((1998) 3 SCC 410), wherein the relevant portion reads thus:

"Collection of sheet fastened or bound together so as to form material whole. Loose sheets or scraps of paper cannot be termed as books."

In this regard, it is relevant to extract Section 69A of the Act, which reads thus:

"69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

The lack of corroborative evidence to show how the loose sheets found at the house of Sri K Rajandran are connected to the Respondents herein, or their occupation, is evident from the panchanama provided by the Assessing officer.

22. The entire allegation is made out on the basis of loose sheets of documents, which does not come under the ambit and scope of 'books of entry' or as 'evidence' under the Indian Evidence Act.

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of CBI Vs. VC SHUKLA (MANU/SC/0168/1998), at paragraphs 16 to 18 of the judgment, it is observed thus:

"16. To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts;

and those provisions are to be found in Section 6 to 55 appearing in Chapter II. Section 5, with which Chapter II opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:- "34. Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

17. 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 alone 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 part 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.

18. "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 be 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."

24. The aforesaid approach is in accordance 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)."

25. The Hon'ble Supreme Court in the case of *COMMON CAUSE AND OTHERS v. UNION OF INDIA*, reported in (2017) 11 SCC 731, at paragraphs 278 to 282 of the judgment, has observed thus:

"278. With respect to the kind of materials which have been placed on record, this Court in *V.C. Shukla* case has dealt with the matter though at the stage of discharge when investigation had been completed by same is relevant for the purpose of decision of this case also. This court has considered the entries in *Jain Hawala Diaries*, note books and file containing loose sheets of papers not in the form of "books of accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

279. It has further been laid down in *V.C. Shukla* case as to value of entries in the books of account, that such statements shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held that even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

280. This court has further laid down in *V.C. Shukla* that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted herein below: (SCC pp.423-27, paras 14 and 20) "14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words: "70.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 abreviated 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." 20. 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'.

281. With respect to evidentiary value of regular account book, this Court has laid down in *V.C. Shukla*, thus: (SCC p.433, para 37) "37. In *Beni Vs. Bisan Dayal* [A. I. R 1925 Nagpur 445] it was observed 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 Vs. Ram Rakha* [A. I. R. 1953 Pepsu 113] the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, 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.

282. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 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 this Court."

26. It is established in law by the Hon'ble Apex Court that a sheet of paper containing typed entries and in loose form, not shown to form part of the books of accounts regularly maintained by the assessee or his business entities, do not constitute material evidence. Following the law declared by the

Hon'ble Apex Court, we are of the view that the action taken by the respondent / Revenue against the Assessee based on the material contained in the diaries/loose sheets, are contrary to the law declared by the Hon'ble Apex Court. In that view of the matter, impugned notices issued under Section 153C of the Act, based on the loose sheets/diaries are contrary to law, which require to be set aside in these writ appeals, as the same are void and illegal."

23. In line with the ratio decidendi, grounds no.9, 10 and 11 are dismissed holding that loose sheets are dumb documents.

24. Vide ground no.12, the Revenue is raising the issue that transactions in agreement to sale are sacrosanct vis-a-vis registered sale deeds no account that some cheque payments are tallying. It is manifest from the order that the assessee had duly explained the circumstances explaining the difference in case of Narendra Deshmukh as regards to the difference in cheque payment. No contrary evidences have been placed on record to dislodge the explanations. Moreover, the contents of registered sale deed cannot be doubted on mere ipse discit of the Assessing Officer without any corroborate the evidences. Accordingly, we are not inclined to interfere in the findings of the learned CIT(A). Consequently, grounds no.12, is dismissed.

25. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 21/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/01/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur