

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.165/Nag./2023
(Assessment Year : 2019-20)

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 Respondent
PAN - AAUFM9880A

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 30/03/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*"learned CIT(A)"*], for the assessment year 2019-20.

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. 98,18,540/- made by the AO which was based on the seized Document No.B/6 (pages 1 to 55), and the said document have the evidentiary value ignoring the fact the AO in the assessment order has given the finding that the exact date of receipt of on money is also mentioned on the back side of the some pages which confirms that the said amount has been received by M/s Metrocity Homes.

2. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 31,64,450/- made by the AO which was based on the seized Document No. B/6 (pages 1 to 55), and the said document have the evidentiary 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.64,03,400/- made by the AO which was based on the seized Document No. B-2/31, and the said document have the evidentiary value.*

4. *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.*

5. *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.*

6 *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.*

7. *Any other grounds that may be raised during the course of appellate proceedings."*

3. As could be seen from the above grounds, grounds no.1, 2 and 3, are the factual grounds which need to be adjudicated in this appeal, whereas grounds no.4, 5 and 6, are concerned with substantial question of law.

4. 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 31/10/2019, the assessee, for the year under consideration, filed its original return of income under section 139(1) of the Act disclosing total income of ₹ 33,83,430. Statutory notices were issued and served on assessee

in response to which the assessee again filed its return of income for the year under consideration on 25/09/2020, declaring income of ₹ 33,83,430. The Assessing Officer then completed assessment under section 143(3) r/w section 153C of the Act on 28/09/2021, determining total income at ₹ 2,29,08,670, after making following additions:-

1	Unexplained money u/s 69A	₹ 98,18,540
2	Unexplained money u/s 69A	₹ 31,64,450
3	Unexplained expenditure u/s 69C	₹ 1,38,850
4	Unexplained money u/s 69A	₹ 64,03,400

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 above additions:-

5. Ground no.1, raised by the Revenue relates to the addition of ₹ 98,18,540, made by the Assessing Officer on account of undisclosed money under section 69A of the Act.

6. Before the learned CIT(A), the assessee challenged the addition of ₹ 98,18,540, made on account of difference between Actual cost and sale deed value mentioned in booking form treated as undisclosed income under section 69A of the Act. The learned CIT(A) granted relief by holding as follows:-

"Ground no. 3 and 4 are regarding the addition of Rs.98,18,540/- u/s 69A as per para 3 & 4 of the assessment order. I have perused the submission of the appellant and the assessment order. On verification it is found that the details regarding "booking chart cum instalment schedule" prepared by marketing executive for various customers. Also, the booking form were prepared on the basis of estimated area to be sold to the customers. It is clear that the booking form are prepared on estimated and should not be considered for ascertaining the actual sale consideration. There is also no evidence of money

trail of the money receipt. Further the appellant 69A of the Act has made various Judicial reference in the submission regarding addition u/s 69a of the Act.

"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. -Durga Kamal Rice Mills v. CIT [2003} 130 Taxman 553 (cal.).

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 are not getting satisfied at all.

Further, whatever documents are found are loose papers and dumb documents. No reliance can be placed on such loose papers. A reliance is placed on the judgment of, CBI vs. V.C. Shukla and Common Cause Society vs. Union of India.

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. [DCIT Vs M/S. Karthik Construction Co. (ITAT Mumbai)].

The Hon'ble Punjab & Haryana High Court in the case of Commissioner of Income-Tax vs Ravi Kumar 294 ITR 78, the assessee was found to be in possession of loose slips and not any valuable article or things. Neither the possession nor the ownership of any jewellery mentioned in the slips was proved. Therefore, the Tribunal had rightly held that the provisions of section 69A of the Act were not applicable. The Tribunal also held that if the assessee failed to explain the contents of the slips, it was for the Revenue to prove on the basis of material on record that they represented transactions of sales or stock in trade before making any addition on this score. The assessee had duly explained that these were rough calculations and the assessee's explanation had not been rebutted by any material evidence".

In view of the above facts and circumstance I direct to the AO to delete the addition of Rs.98,18,540 /-. Hence these grounds of appeals are allowed."

7. Before us, the learned Departmental Representative relied upon the order passed by the Assessing Officer.
8. The learned Counsel for the assessee made following submissions:-

"Ground No. 1 : Addition made of Rs. 98,18,540/- being unexplained money u/s 69A of the Act.

A.O. – Para 3 & 4 – Page No. 35 to 44

CIT (A)

Page No. 82 to 88

The addition to total income of Rs. 98,18,540/- was made on account of difference between estimated sale consideration in booking form of customers and the final sale deed value, which has been framed as undisclosed money u/s 69A as per Para 3 & 4 of Assessment Order.

Document No. B/6 as referred to in said Para contained details Booking Form of some customers filled by marketing staff of the assessee at the time of enquiry of booking by the customers. The said form is filled to fix the moral responsibility of the customers. The said form is filled on the basis of estimated area and the sale price per Sq. Ft. of the flat, which can be evident from the following chart.

Page No.	Name of Customer	Flat No.	Area as per Booking Form Sq. Ft.	Area as per Sale Deed Sq. Ft.	Difference in Area	Rate as per Booking Form
1	2	3	4	5	6	7
35 to 37	Malti Kathale	301-C	1300	991.88	308.12	3177
32 to 34	Deepak Sudhalwar	302-C	1300	1000.41	299.59	3350
24 & 28	Sumati Salve	103-A	1150	662.4	487.6	3000
21 & 23	Sandhya S Uttarwar	202-C	1285	See Note Below		3274
18 to 20	Alok Sharma	602-B	1115	604.94	510.06	3230
14 to 17	Ravindrasing Patil	705-A	950	491.4	458.6	3145
13	Vijay Raut	201-C	1285	985.2	299.8	3350
10 to 12	Akshay Kondawar	401-C	1285	700.47	584.53	3250
6 to 8	Bijal N Malani	102-C	1200	913.01	286.99	3275
In these cases only booking form is available, there is no booking of these customers						

If the area mentioned in the sale deed as per column 5 is compared with area mentioned in the booking form as per column 4, the area as per sale deed is much less than the area as per booking form. The difference in area is mentioned in column 6 of the above chart. In one case only booking form is available there is no booking of this customers in the project. From the above it is clear that the booking forms are prepared on estimates only. The notings in the booking form are not matching with the actual transactions and cannot be relied upon.

The detailed reply stating the difference of area as per booking form & as per sale deed was submitted during the assessment proceedings, but the AO mentioned in his order that "The copy of these documents was provided to the assessee but instead of replying specifically the assessee brushed aside all the above facts and denied the transactions.", casually without considering the reply of the assessee.

Even the AO himself mentioned in his observation at para 3 of the Assessment Order that "It is to be noted that the assessee has filled the booking form for each customer as mentioned above amount to be paid by each customer to the builder." If the said amount is to be paid by customer, how the same can be added to the income of the assessee.

The assessee submitted the reply during the assessment proceedings with all explanations along with supporting documents, which were already available with the AO as the same were impounded during the course of search, the burden shifts to the department to prove that the replies submitted by the assessee were not correct and entries are susceptible of resulting in income, that has not been disclosed in the regular books of account.

In such circumstances if there was no direct or corroborative evidence to presume that the notings or jotings had materialised into transactions giving rise to income not disclosed in the regular books of account, such jotings and notings are of no evidentiary value, and will not enable the AO to determine any income based on such jotings and notings."

9. The learned Counsel for the assessee thus prayed that the impugned order passed by the learned CIT(A) be upheld.

10. Per-contra, the learned Departmental Representative vehemently submitted that the loose papers clearly proved that the assessee had not truly disclosed his income.

11. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find force in the observations made by the learned CIT(A) that there has been no money, bullion found during the search and survey action. Neither jewellery and/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 section 69A are not getting satisfied at all. We find force in the observations so made by the learned CIT(A). In support of such observation, learned CIT(A) has perfectly placed reliance upon the case law cited supra. We also find no evidence of money trail of the booking chart cum instalment schedule. The learned Counsel for the assessee putforth his arguments very precisely by bringing out the facts justifying the deletion of addition made by

the learned CIT(A) as aforesaid and we agree with him. In view of the undeniable observations made by the learned CIT(A) as reproduced above, we left with no choice but to uphold the impugned order passed by the learned CIT(A) by dismissing ground no.1, raised by the Revenue.

12. Ground no.2, relates to the addition of ₹ 31,64,450, made on account of unexplained money under section 69C of the Act.

13. The learned CIT(A) granted relief by observing as follows:-

"Ground no.5 and 6 are regarding the addition of Rs. 31,64,450/-u/s 69A as per para 5 of the assessment order. I have perused the submission of the appellant and the assessment order. On verification it is found that the details regarding "booking chart cum instalment schedule" prepared by marketing executive for various customers. Also verifying the documents details for Manish Malviya and Omprakash kakade are mentioned, there is only booking form available, there is not an actual booking of these customers. In view of the above facts and circumstance I direct to the AO to delete the addition of Rs. 31,64,450/-. Hence these grounds of appeals are allowed."

14. Before us, the learned Departmental Representative could not make effective arguments on this count. He relied on the assessment order passed by the Assessing Officer and prayed that the same may be upheld.

15. The learned Counsel for the assessee reiterated the submissions made before the authorities below. He also made a detailed submissions which are reproduced below:-

"Ground No. 2 : Addition made of Rs. 31,64,450/- being unexplained money u/s 69A of the Act.

A.O. – Para 5 – Page No. 44
CIT (A) Page No. 88 to 89

The addition to total income of Rs. 31,64,450/- was made on account of difference between estimated sale consideration in booking form of customers and the final sale deed value, which has been framed as undisclosed money

u/s 69A as per Para 3 & 4 of Assessment Order, whereas there is no booking by the customer addition is on the basis of booking form only.

Document No. B/6 as referred to in said Para contained details Booking Form of some customers filled by marketing staff of the assessee at the time enquiry of booking by the customers. The said form is filled to fix the moral responsibility of the customers. The said form is filled on the basis of estimated area and the sale price per Sq. Ft. of the flat.

<i>Page No.</i>	<i>Name of Customer</i>	<i>Flat No.</i>	<i>Area as per Booking Form Sq. Ft.</i>	<i>Area as per Sale Deed Sq. Ft.</i>	<i>Difference in Area</i>	<i>Rate as per Booking Form</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
<i>1</i>	<i>Manish Malviya</i>		<i>1285</i>	<i>See Note Below</i>		<i>3270</i>
<i>2.3.5</i>	<i>Omprakash Kakade</i>	<i>603-A</i>	<i>1250</i>	<i>See Note Below</i>		<i>3250</i>
<i>In these cases only booking form is available, there is no booking of these customers</i>						

In the above cases there is no booking of the above customers in the project but only booking form is available. The reply of assessee was not considered by AO."

The learned Counsel for the assessee thus prayed for upholding the order of the learned CIT(A) on this issue.

16. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. While going through the record, we find that basically the addition made by the Assessing Officer is on account of difference between estimated sale consideration in booking form of the customers and the final sale deed value, however, the Assessing Officer was not justified in making addition when there is no booking by the customer and hence the addition can sustain on the basis of booking by the customer. As can be seen from the chart tabulated above, there is no booking by the customers but only booking form is available. Consequently, in our considered opinion, the learned CIT(A) was indeed justified in deletion of addition. The learned Departmental Representative

failed to bring on record any material to disagree with the submissions so made by the learned Counsel for the assessee. Accordingly, the impugned order passed by the learned CIT(A) is hereby upheld by dismissing the ground no.2, raised by the Revenue.

17. Ground no.3, raised by the Revenue relates to addition of ₹ 64,03,400, made by the Assessing Officer on account of unexplained money under section 69A of the Act.

18. The learned CIT(A) deleted the addition by observing as under:-

"Ground no. 7 and 8 are regarding the addition of Rs.64,03,400/- u/s 69A as per para 7 of the assessment order. I have perused the submission of the appellant and the assessment order. On verification it is found that the notings were made by the marketing executive. The actual cost of flat mentioned by the executive was an estimate of the total cost to be borne by 2 the customer in order to make the flat ready for occupation. The amount mentioned in the images was not the sale value which is mentioned in the assessment order in the para 8. The flat sale value is negotiated with the customer by the appellant. Moreover, said mentioned amount is irrelevant and inadmissible as evidence. In view of the above facts and circumstance I direct to the AO to delete the addition of Rs. 64,03,400/-. Hence these grounds of appeals are allowed."

19. Before us, the learned Departmental Representative relied on the contents of the assessment order and prayed that the same may be upheld.

20. The learned Counsel for the assessee made following submissions:-

Ground No. 3 : Addition made of Rs. 64,03,400/- being unexplained money u/s 69A of the Act.

*A.O. – Para 8 – Page No. 46 to 48
CIT (A) Page No. 90 to 91*

The addition to total income of Rs. 64,03,400/- was made on account of print out of whatsapp images taken from I-phone of Shri Prashant Bongirwar.

Document B-2/31 contains whatsapp images taken from I-phone of Shri Prashant Bongirwar. These images are nothing but the images of booking forms mentioned in Ground No. 1 & Ground No. 2 above. These are not monetary transactions. It is clear that the booking forms are prepared on estimates only. The notings in the booking form are not matching with the actual transactions and cannot be relied upon.

Page No.	Name	Flat No.	Amount	Remark
10	Malti Kathale	301-C	1000000	Already added in Para 3, Ground No. 1 Rs. 11,30,000/-
13	Atul Salve	103-A	1450000	Already added in Para 3, Ground No. 1 Rs. 14,50,000/-
14	Alok Sharma	602-B	901450	Already added in Para 3, Ground No. 1 Rs. 6,01,450/-
15	Ravindra Patil	705-A	300000	Already added in Para 3, Ground No. 1 Rs. 3,00,000/-
16	Vijay Raut	201-C	500000	Already added in Para 3, Ground No. 1 Rs. 5,00,000/-
20	Manish Malviya	-	1601950	

Further the additions made in above grounds, i.e. Ground No. 1 to Ground No. 3 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 u/s. 131 of the Income Tax Act, 1961, from the Investigation Department, the customers have categorically denied having paid any cash amount as on-money to the assessee. The Investigation Department has accepted their reply but added the same amount in the income of the assessee without accepting its explanation.

The addition was done on the basis of impounded documents as the AO 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, i.e. Booking Forms. The cash receipts are also not on record though the cash transactions mentioned above are of sizable amount.

The A.O.'s examination was very casual and not based either on the possible further enquiries or workings.

21. The learned Counsel for the assessee, apart from the above submissions relating to the issue raised in ground no.3, also made following submissions separately covering all the grounds extensively raised by the Revenue and the case laws relied upon in support of the respective grounds. The said submissions are reproduced below for better appreciation of facts:—

"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.

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

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.

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.

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.

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.

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.

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.

With the back drop of facts and legal position, the impugned seized loose paper bundles 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 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.

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. The notice issued to one of the customer has been enclosed herewith for your kind perusal, where the DDIT has asked them to submit copy of sale deed with proof of payment made. 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 by the department to ascertain whether the payment of "on money" was made by them or not which had been clearly denied by all the customers to which the DDIT was satisfied and not proposed any action on the

customers, whereas the AO has deliberately ignored this facts and added the amount in the income of the assessee. Hence, no additions ought to have been made without considering the statements of the customers given to Deputy Director of Income Tax (Investigation).

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

22. In support of his arguments, the learned Counsel for the assessee placed reliance on the following case laws:–

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 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 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 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 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 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 it was held that the documents recovered during the course of search from the assessed 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 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 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 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 it was held that The basis for addition Smt. 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 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. 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 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 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 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 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 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. "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. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. In fact, what have been observed by us is, the Assessing Officer made addition on the basis of whatsapp images obtained from I-Phone of Shri Prashant Bongirwar. No monetary transactions are existed which makes it clear that the booking forms are estimated which are even not matching with the actual transaction. The addition was made by the Assessing Officer on the basis of on-money received from the customers by the assessee. The customers, who were summoned, have categorically denied having paid any on-money to the assessee and the same was accepted by the Investigation Department but added the same to the income of the assessee without considering the explanation given by the assessee. Against the impounded documents, the Assessing Officer failed to bring on record any corroborative evidence to show that the higher consideration was actually received by the assessee outside the books of account to match with the figures of difference appearing in loose sheet by way of booking forms. The Assessing Officer even failed to examine the issue properly by cross-examining with the customers who booked the Flats if he was not in consonance with the inquiries of Investigation Department. Before us also, nothing was brought on record to rebut the arguments of the learned Counsel for the assessee. Therefore, we decline to interfere with the observations of the learned CIT(A). further reliance on electronic evidences without certificate under section 65B of the Evidence Act, 1872, is not permissible. Accordingly, we uphold the impugned order passed by the learned CIT(A) by dismissing the ground no.3, raised by the Revenue.

24. Ground no.4, 5 and 6 are concerned, we find that the learned CIT(A) has duly considered the submissions of the assessee as appropriately referred in the following lines:-

"Further, whatever documents are found are loose papers and dumb documents. No reliance can be placed on such loose papers. A reliance is placed on the judgment of CBI v/s V.C. Shukla and Common Cause Society v/s Union of India."

25. Having given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record, we find that the learned CIT(A) has perfectly relied upon the said judgment of the Hon'ble Apex Court cited supra and no interference in the findings of the learned CIT(A) is warranted. The learned Departmental Representative could not refute or controvert the said judgment of the Hon'ble Supreme Court (supra).j Placing reliance on the said judgment of the Hon'ble Supreme Court cited supra, we dismissed grounds no.4, 5 and 6, raised by the Revenue holding the same to be unsustainable.

26. Our view is further fortified by Their Lordships of the Hon'ble High Court of Karnataka in Sunil Kumar Sharma (supra), contained in Para-21 to 26 as 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 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 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 arises to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in the 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." 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."

27. Our view is further fortified by Their Lordships' observations cited supra.

28. Insofar as addition of ₹ 1,38,850, on account of unexplained expenditure under section 69C of the Act made by the Assessing Officer is concerned, it is evident that the assessee has raised this issue before the learned CIT(A) and the learned CIT(A) allowed this ground. However, since the Revenue has not raised this issue before us, we refrain to adjudicate the same.

29. Ground no.7, being general in nature, hence not required to be adjudicated.

30. 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