

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2220/Chny/2024  
निर्धारण वर्ष /Assessment Year: 2016-17

The DCIT, Central Circle-2(4), Chennai.	v.	Shri Jagannathan Sekat, No.5 Fifth Street, Gopalapuram, Chennai-600 086.
		[PAN: BCDPS 4688 G]
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Department by	:	Mr. Nilay Baran Som, CIT
Assessee by	:	Mr. R. Venkata Raman, CA
सुनवाई की तारीख /Date of Hearing	:	03.12.2024
घोषणा की तारीख /Date of Pronouncement	:	28.02.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-19, Chennai, (hereinafter in short 'the Ld. CIT(A)'), dated 24.06.2024 for the Assessment Year (hereinafter in short 'AY') 2016-17.

**2. The Revenue has raised the following legal grounds:**

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.



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2 The Ld.CIT(A) erred in holding that the AO lacked jurisdiction to invoke the provisions of section 153C of the Act when the AO relying upon the sworn statements recorded u/s 132(4) and 131(1A) of the Act from Shri Balakrishnan Ramamoorthy and Shri Javvaji Ramanjenyulu, arrived at the satisfaction after drawing up a satisfaction note & Notice u/s.153C of IT Act was issued to the assessee on 25.01.2021.

3. The Ld.CIT(A) erred in not appreciating the fact that the AO concluded that the assessee has made an investment to the tune of Rs.51.75 Crores towards the purchase of shares of R.V. Sathyanarayana in M/s.. Jothirmayee Estates and completed the assessment by treating the amount of Rs.51.75 Crores as unexplained investment u/s 69 r.w.s. 115BBE of the Act and passed order u/s 143(3) r.w.s. 153C of the Act on 30.09.2021 based on seized material notings recorded in Page No. 267 (backside) and in Pages 276-279 of the loose sheet, which were seized vide ANN/NN/JR/LS/S. which revealed that the assessee had made payments for purchasing shares held by Shri. R. Satyanarayana in M/s. Jothirmayee Estates, over and above the amounts disclosed in the books of accounts..

4. The Ld.CIT(A) erred in observing that the material found in the premises of a third party and not having entries in the handwriting of the assessee could not be used to draw adverse inference in the case of the assessee when Section 132(4A) r.w.s 292C of IT Act provides for a presumption that the contents of documents found during the course of search are true and though such presumption is rebuttable, the onus is on the assessee to furnish evidence or explanations to rebut the same.

5. The Ld.CIT(A) erred in holding that the statements were retracted by Shri Javvaji Ramanjenyulu & hold no value is wrong in view of Madras High Court decision in A. J. Ramesh Kumar v. Dy. CIT (2022) 441 ITR 495 (Mad.) (HC)/(2022) 139 taxmann.com 190 (Mad.), where it has held that "the burden lay on the appellant to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion indicating that there was an element of compulsion for appellant to make such statement."

6. The Ld CIT(A)'s reliance on Singhad Technical Education Society v ACIT (2011) 140 TTJ 233 (Pune) is erroneous as the facts of the cited case are distinguishable to the extent that in that case, it had been found that the incriminating material did not establish correlation with any assessment year in respect of which notice u/s 153C of IT Act had been issued in that case. In the instant case, the AO has in the satisfaction note clearly referred to the entries in seized documents as well as further corroboration in the form of statements of Sh Ramamoorthy implicating the payments made for acquiring shares.

7. The Ld CIT(A)'s reliance on the case of PCIT v Abhisar Buildwell P Ltd in CA No 6580 of 2021 dated 24.4.2023 in support of his observation that order u/s 153C of the Act had been passed without relying upon any incriminating material is erroneous as the decision is not applicable to the facts of the present case as the satisfaction note drawn up by the AO in this case clearly specified the specific material seized during the course of the search as well as further corroborated as per statements recorded from Sh Ramamoorthy.



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8. For these grounds and any other grounds including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

**3.** The facts of the case as noted are that, the assessee is an individual who is also a partner in a firm, M/s SRS Mining, which is engaged in the business of letting out heavy duty vehicles. For the relevant A.Y. 2016-17, the assessee had filed his return of income on 30.03.2018 declaring total income of Rs.3,11,69,970/-. In the meanwhile, search action u/s 132 of the Act was conducted upon M/s SRS Mining on 08.12.2016, in which the assessee also is a partner. Pursuant to the said search, notice u/s 153A of the Act was issued for the relevant year on 18.08.2017, in response to which, the assessee filed his return of income declaring the same sum as originally declared u/s 139 of the Act. It is noted that the case of the assessee was taken for scrutiny and the assessment was completed u/s 143(3) of the Act vide order dated 06.02.2020 at total income of Rs.38,08,36,637/- after making an addition of Rs.7,96,66,667/-. Aggrieved by this order, the assessee is noted to have disputed the same in appeal.

**4.** It was brought to our notice that, there was another search u/s 132 of the Act which was conducted in the group cases of Shri Danda Brahmanandam, Shri Javvaji Ramanjenyulu, Shri Balakrishnan Ramamoorthy & others on 21.02.2019. In the course of search, at the residence of Shri Javvaji Ramanjenyulu, loose papers were seized and ID



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Marked ANN/NN/JR/LS/S. It was noted that certain noting's were found recorded on Page No. 267 and 276 to 279 of these bunch of loose papers, which was explained by Shri Javvaji Ramanjenyulu in his statement u/s 132(4) of the Act, to be discussion regarding sale of shares of M/s Bhavya Construction Co. and that, according to him, the noting's would corroborate with their books of accounts and in case of any discrepancy, he shall offer the same as his undisclosed income. The relevant question and his answer is noted to be as follows: -

" Q. No. 24 I am showing you loose sheet documents vide ANN/NN/JR/LS/S in pg nos. 276 to 279 seized from your residential premises during the course of search u/s 132 of the Income Tax Act, 1961 containing certain amounts representing Principal along with interest workings and also certain amounts and also certain amounts shown as paid. Kindly go through the same and explain the transactions.

Ans. I have gone through the said documents carefully. This is regarding the discussions regarding the sale of shares of M/s Bhavya Constructions company between the partners. I am unable to recognize the handwriting and I am not aware who has written down the same. These are calculations that have been made which can be corroborated from the books of accounts of all shareholders. If the same cannot be explained, I shall offer the amounts mentioned herein as undisclosed income if I am not able to explain the same."

**5.** It was specifically brought to our notice that, Shri Javvaji Ramanjenyulu from whose possession and control these loose sheets were found had nowhere named the assessee or even remotely suggested that these noting's related to him. Rather, he had initially averred that these noting's may pertain to his group and that he shall corroborate the same later. In the course of same search conducted at the residence of



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Shri Balakrishnan Ramamoorthy, some loose sheets were found and seized and the statement of Shri Balakrishnan Ramamoorthy was recorded on 22.02.2019, wherein, he had *inter alia* replied to Question No. 26 as under:-

"Q 26. Although you have agreed for the final settlement of Rs. 65crores with the above parties, how did you agree for the sum of Rs.19 Crores as per the MoU dated 22.09.2017.

Ans. Shri J. Sekar Reddy has given a sum of Rs. 26 crore to Shri Sathyananyana to acquire 50% of share in Joythirmaye Estate) in cash and Rs.9 crores through banking channel. He has also paid a sum of Rs.8.5 crores to Shri Gandhi, MLA in cash and Rs. 5 crores to Shri A.P. Nandakumar, MLA by way of cash in lieu of original contribution of Rs. 40 Lakhs paid to the vendors in 2010 in the same way he has agreed to pay Rs.46 crore by way of cash and Rs.19 Crores through banking channel. But we have received only Rs. 13.10 crores bank on various dates."

**6.** The Authorized Officer upon analysis of the noting's found in the above-mentioned loose sheets ANN/NN/JR/LS/S [Pages 267, 276 to 279] seized from the residence of Shri Javvaji Ramanjenyulu in light of the above statement of Shri Balakrishnan Ramamoorthy, noted certain correlation between the figures. He, therefore, again recorded a statement u/s 131(1A) of the Act from Shri Javvaji Ramanjenyulu on 05.07.2019. In this statement, Shri Javvaji Ramanjenyulu is noted to have stated that, he had mistakenly inferred the loose noting's to be relating to M/s Bhavya Construction Co. According to him, these loose noting's were not in his handwriting and may have been written by some unknown person and therefore he could not explain its contents. He also said that, there are no details of payer or payee on the said sheet and



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thus he is unable to make out the context of these noting's. He further averred that, these noting's were not related to him or his business transactions. The relevant explanation given by him, is noted to be as under: -

"The loose sheets stated in the above paragraph having placed before me once again for my comments a fresh. In this regard the essential character of these loose sheets is such that they are written by an unknown person and there are no details of Payer or payee and there are no details to whom it pertains to and finally these does not provide any guidance or inference that is meaningful from the examination of the same. While at the time of search the pressure under which I was giving the statement though I could not recognize the hand writing as well as the underline numbers I thought it could be relating to transactions of M/s. Bhavya Constructions which I now conclude that my inference is incorrect and I completely deny the answer that was provided at the time of search and the answer that is provided now shall replace the same.

Further it may be appreciated that during the course of search various materials have been seized pertaining to various business entities where I am either a partner or a director or has some business interest. The review of all the material together with sheets mentioned in this question does not even remotely corroborate to any kind of underlying transaction that can be assumed to have been undertaken by me or my family members. In other words, these loose sheets referred in this question remain an unrelated and irrelevant to my business or personal transactions. Thus the sheets should not be reckoned to have any relevance to me."

**7.** Again, it is observed that, even in this statement, Shri Javvaji Ramanjenyulu had not named the assessee/respondent or had suggested that the scribblings found on this loose sheet, which admittedly had no details of payer or payee, pertained to the assessee. Later on, again on 08.07.2019, the Authorized Officer again confronted Shri Balakrishnan Ramamoorthy regarding his deposition which was recorded at his residence on 22.02.2019 wherein he had averred that the assessee had



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made cash payments to Shri Sathyananyana and others, and also required to provide evidence in this regard. Shri Balakrishnan Ramamoorthy is noted to have responded as under:

"With regard to Rs 26 crore paid to RV Satynarayana for the purpose of acquiring his share in M/s. JME. I once again reiterate that dandaBrahamandam and R.V Sathynaryana are only the investors and they do not have any intention to buy the disputed property. All along the investor demanded the double the amount of the investment made by them. Hence on the very date of the sale deed dated 4.03.2014 in the name of Ms. JME, on the very same day they have executed the sale agreement on 14.03.2014 for Rs. 60 Crores. At the time of entering the sale agreement, in my favour I have also paid the sale advance of Rs 10 lakhs by of cash to the partnership firm that is M/s. JME. As per the sale agreement I have to return the 60 crore within a period of 1 year or from the date of approval from the sanction plan from the appropriate authority. As stated above the investor DandeBrahamanadam invested Rs 15 crore and another investor Mrs. Sathyanaryana also invested Rs 15 crore. This agreement being the logical conclusion for arriving the final settlement of Rs 35 crores to RV Sathynarayana, As per the agreement the investor RV Sathynarayana was entitled for Rs 30 core towards his investment but the final settlement was settled to RV Sathyanannyana only in the month of November December, 2015. For that interest has been calculated for the period March 2015 to December, 2015 amounting to Rs 5 crore and in all totaling to Rs.35 crore. Out of this 35 crores, J. Sekar had paid Rs 26 crore by way of cash to RV Sathynarayana and the remaining 9 crores is paid by way of cheques or through bank channels. I also wish to add that Shri. Ramanjenyulu being the political mediator for Minister K.C. Veeramani (Minister for commercial taxes for the state of Tamilnadu) and through him being the mediator J.Sekarreddy acquire 50% share of RV Sathynarayana in M/s. JME for which Sekar Reddy has paid Rs 10 crore by way of cash as a brokerage/commission charges to Mr. Ramanjenyulu."

**8.** It is noted that although Shri Balakrishnan Ramamoorthy had implicated the assessee of making cash payments to Shri Sathyananyana but no proof or evidence was given by him, as requisitioned by the authorized officer while deposing him.



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**9.** In view of the above, it is observed that, the case of the assessee was again reopened by issue of notice u/s 153C of the Act dated 25.01.2021. According to the assessee however, the said notice was not accompanied by the relevant satisfaction note and, therefore, the assessee did not file the return of income in response to this notice. It is observed that, the AO, thereafter issued notice u/s 142(1) of the Act dated 10.02.2021 calling for details. The assessee is noted to have sought an adjournment and again requested for the copy of the satisfaction note. It is observed that, similar letter was again filed by the assessee on 25.03.2021 reiterating the same request. Although neither the satisfaction-note nor the relevant seized material was provided, the assessee is noted to have filed his return of income in response to the notice u/s 153C of the Act on 01.05.2021. Thereafter, the AO had called for details vide notice dated 17.09.2021, and the assessee again sought the copies of the seized material and satisfaction note vide letter dated 21.09.2021. The AO is noted to have issued a final show cause notice dated 24.09.2021 proposing to make an addition of Rs.41,75,00,000/- with reference to the above noting's found on loose papers from the premises of Shri Javvaji Ramanjenyulu. For arriving at the impugned figure, the AO is noted to have undertaken permutations & correlations of the figures found mentioned in Page 267 (backside) of document ID marked ANN/NN/JR/LS/S and inferred that, the noting's on Page 279



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suggested that total consideration finalized by the assessee for acquiring 50% share in one entity, M/s Jyothirmayee Estate was Rs.41.75 crores which comprised of the settlement amount agreed with Shri R Satyanarayana comprising of principal of Rs.15 crores and interest of Rs.26.75 crores. Further, the AO also inferred that this settlement amount included payments made to different persons, representing different beneficiaries, each of whom who had invested Rs.40 lacs each for Rs.2 crores as advance vide sale agreement dated 18.10.2010. The AO thereafter, correlated the noting's found on Page 279 with that of Page 278, where a figure of Rs.9.10 crores was mentioned, which according to AO, tallied with the amount of Rs.9.10 crores paid across different dates by the assessee to Shri R Satyanarayana, and whose ledger account was confirmed by Shri Danda Brahmanandam in his sworn statement dated 07.07.2019. With these permutations & correlations, the AO is noted to have linked the scribblings found on backside of Page 267 with Pages 276 to 279 and concluded that the actual consideration paid to Shri R Satyanarayana was not only Rs.9.10 crores but further sum of Rs.41.75 crores was paid in cash. The relevant contents of the show cause notice, is observed to be as follows:-

"From the above discussion on this issue, it can be seen from the noting in page 279, the total consideration finalized by you for acquiring 50% shares in M/s Jyothirmayee Estates was Rs 41,75,00,000/-. The said total consideration of Rs 41.75 crores comprises of settlement to be made to R. Satyanarayana in lieu of his 50% shares held with M/s Jyothirmayee Estate (Principal Rs 15,00,00,000 plus interest Rs



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26,75,00,000). Further the said consideration of Rs 41.75 crores also comprises of the settlement to be made to different people namely Shri Santhosh (representing Shri Gandhi), Shri Prasad (representing A.P.Nandhakumar) and Shri Uttam Chand (representing Shri Sekar Reddy) who had invested Rs 40 Lakhs each for Rs 2 Crores as advance vide sale agreement dated 18.10.2010.

The noting found in page 278 refer to the amount paid by cheque by you to R.Satyanarayana on different dates amounting to Rs 9,10,00,000/-, The same is confirmed by the ledger account submitted by Shri Danda Brahmanandam vide his Annexure-6 to his answer to Q.No. 13 of the sworn statement recorded from him u/s. 131(1A) on 07.07.2019 during the post search investigations. Hence a part of the transaction that was found in page no 267 (backside) and in page 276-279 stands validated with respect to the actual consideration as recorded in the books of accounts. In view of the same, the remaining noting pertaining to the same subject stands validated too, unless it is proved contrary by you with admissible evidences. Further, the found in page 277 and 276 refers to the disbursal of the total amount namely the principal and interest on various dates to R.Satyanarayana and others as mentioned above by the assessee.

In view of the above, a show cause notice was issued on 23.09.2021 as to why an amount of Rs. 41.75 Crore paid by assessee towards purchasing the shares of Shri R Satyanarayana held with Ms. Jyothmayee Estates and in the hands of others as discussed above after ascertaining their respective shares, in the hands of the assessee as unexplained investment for different financial years"

**10.** The assessee is noted to have not responded to the above show cause, for the reason that the AO neither provided the seized material or satisfaction note or copies of the relevant statements being relied upon by him. The AO accordingly proceeded to make the addition of Rs.41.75 crores, as set out in his show cause and further added another sum of Rs.10 crores, by way of cash commission paid in relation to this acquisition of stake in M/s Jyothirmayee Estate, by relying on the statement of Shri Balakrishnan Ramamoorthy. The AO is noted to have completed the assessment u/s 153C/143(3) of the Act vide order dated



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30.09.2021 after making the aforesaid addition to the total income of the assessee. Overall, therefore, it is observed that, the basis of the impugned addition was primarily the statement of Shri Balakrishnan Ramamoorthy, basis which the AO had interpreted the rough scribbings found on loose sheets seized from the premises of Shri Javvaji Ramanjenyulu.

**11.** Being aggrieved by the order of the AO, the assessee had preferred an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A) was pleased to delete the impugned addition, both on merits as well as on the legal ground. The Ld. CIT(A), on merits, held that, the noting's found in the loose sheets were dumb in nature and could not be inferred against the assessee. He also found the statements of Shri Javvaji Ramanjenyulu & Shri Balakrishnan Ramamoorthy to be unreliable and therefore deleted the impugned addition by holding as under:-

"6.3.11 While going through the seized material relied by the AO, it can be seen that, it does not contain the signature of the Appellant for having paid the amount as narrated in the seized material and also the date of payment, mode of payment. The AO on the basis of the statement(s) recorded u/s 132(4) & 131 (1A) of the Act from Shri Javvaji Ramanjenyulu and Shri Balakrishnan Ramamoorthy has perceived the narration in the loose sheet are the alleged payments made by the Appellant for the purchase of 50% shares in M/s. Jothirmayee Estates. It is noted that neither the Investigation Officer nor the AO had any occasion to cross examine the issue with the Appellant at any point of time. No enquiry was made neither during the course of search nor during the course of assessment proceedings. It is significant to bring on record that no statement of any kind was recorded from the Appellant confronting about the materials seized during the course of search and about the contents of the statement recorded from Shri Javvaji Ramanjenyulu and Shri Balakrishnan Ramamoorthy either by the Investigating Officer nor by the Assessing Officer. In the absence of any such confrontation with the Appellant, the



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Appellant had no occasion for cross examination of the above persons. Thus the AO has proceeded to complete the assessment based upon the materials seized and the statements recorded during the course of search unilaterally. It is evident in the assessment order that the AO has travelled in a direction as navigated by the Investigation Officer.

6.3.12 It is noted in the instant case that the said loose sheet relied upon by the AO was neither seized from the premises of the Appellant nor was the same found to be in the handwriting of the Appellant. Such material seized in the case of a third party which is not in the handwriting of the Appellant does not constitute adequate evidence to draw any adverse inference against the Appellant, in the absence of any other corroborative evidence. This proposition has been laid down by the Hon'ble Delhi High Court in the case of CIT Vs Sant Lal [2020] 118 taxmann com 432 (Del) , wherein it was held that "*where a diary was seized in search of the premises of a third party allegedly containing entries of hundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries since the diary was neither found from premises of assessee nor was it in handwriting of assessee and revenue failed to produce any other cogent material to link the assessee to the diary.*"

6.3.13 The ratio of the above decision is squarely applicable to the case of the Appellant, as the AO has not referred to any cogent evidence applicable to the case of the Appellant. In the present case, the AO has not referred to any cogent material to corroborate that the noting made in the loose sheet seized from a third party which are purportedly the transactions made by the Appellant and there is absolutely no mention in the seized material regarding the nature of the said transactions of cash payments, the purpose of such payments and the precise identity of such transaction. A narration made in a loose sheet by a third person with scanty details cannot be used to fasten tax liability upon the person whose name does not appear at all. In the absence of any corroborative evidence to attribute the entries to such a person. Such seized material is liable to be treated as a dumb document, which does not have any evidentiary value in respect of the entries found therein, unless corroborative evidence is available which can provide necessary reliable basis for deciphering the nature and character of the said entries.

6.3.14 At this juncture, it would be relevant to refer to the decision of Hon'ble ITAT, Jabalpur in the case of ACIT Vs Satyapal Wassan [TS-5104-ITAT-2007(Jabalpur)-O] (2008) 5 DTR 0202, wherein the Hon'ble ITAT stressed the importance of gathering corroborative evidence in support of the contents of a document, particularly when the document is bereft of necessary details and is not complete in all respects, by stating as under:



...

6.3.15 The proposition that addition cannot be made merely on the basis of entries in loose sheets found in the premises of a third party without bringing on record independent evidence to corroborate such entries has been reiterated in several decisions. Some of the decisions to this effect are MM Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 200, Regency Mahavir Properties Vs ACIT [2018] 169 ITD 35 (ITAT-Mumbai), ACIT Vs. Katrina Rosemary Turcotte [2017] 190 TTJ 681 (ITAT-Mumbai), DCIT Vs. Vipin Aggarwal [2017] 83 taxmann.com 6 (ITAT Chandigarh), S.P Goyal Vs DCIT [2002] 82 ITD 85 (TM) I PAT, T.S Venkatesan Vs ACIT [2000] 74 ITD 298 (Cal) and Monga Metals (P) Ltd Vs ACTT [2000] 67 TTJ 247 (All).

6.3.16 In particular, it is of critical importance that the evidence to corroborate the entries indicating payments in the seized material found with a third party is available with specific reference to the fact regarding actual transfer of money from the said third party to the recipient named in the said entries in the seized material. The Hon'ble ITAT, Mumbai held in the case of Riveria Properties Private Limited Vs ITO in ITA No.250/MUM/2013 that the AO is required to bring further evidence on record to show that the money was actually exchanged between the parties in a case where there is no other evidence on record to prove that on-money was paid except the loose sheet found in the premise of a third party and admission made by the third party. The relevant part of the said decision is reproduced as under:

*"In the present case on hand, except loose sheet found in the premises of third party and admission made by the third party in their assessment proceedings, there is no other evidence on record to prove that on money is paid. The assessing officer, without brought on record any evidence to prove that on money is exchanged between the parties, merely harping upon the loose sheet and the third party admission, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income. The AO is required to bring further evidence on record to show that actual on money is exchanged between the parties, but literally failed to do so. The A.O. did not conduct any independent enquiry relating to the value of the property instead, merely relied upon the statement given by the purchasers of the property, which is not correct. Further, there is no proof of origin and destination of on money. The A.O failed to prove the source of the purchasers as to how the money was arranged and also failed to prove the deployment of unaccounted money by the seller by any form of evidence. Under these circumstances, based on paper jottings as conclusive evidence on*



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*money cannot be brought to tax as income from undisclosed sources."*

6.3.17 Further in the case of K.P Varghese Vs. ITO (1981) 131 ITR 597, the Hon'ble Apex Court held that *"the onus of establishing that the conditions of taxability are fulfilled is always on the revenue and that throwing the burden of showing that there is no under-statement of consideration on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely, that he did not receive any consideration beyond what has been declared by him. It needs to be held that the burden is on the revenue to adduce proper evidence to corroborate the contents of the seized material for the purpose of establishing that the Appellant was in fact in receipt of the payments as noted in the seized material"*. It is evident that such a burden has not been discharged by the revenue in the case of the Appellant.

6.3.18 As per the decisions of the Hon'ble Apex Court in the case of Dhakeshwari Cotton Mills Lids. CIT (1954) 26 ITR 775 (SC) has held that *corroborative evidence is essential to support the evidence found in third party premise*. In order to properly appreciate the issue, it is pertinent to refer to the following extract from the decision of Hon'ble Apex Court in the case of Dakeswari Cotton Mills Ltd Vs. CIT (1954) 26 ITR 775 (SC):

*"As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence, a court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of Section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh (supra)".*

6.3.19 As evident from the decisions cited above, the AO is not entitled to make a pure guess and make an assessment without reference to any evidence / material. It follows there, that no addition can be made unless there is corroborative evidence to validate the entries found in the material seized from a third party.

6.3.20 As discussed supra, the seized material relied upon by the AO, more particularly the loose sheet which was found and seized at third party premise when the same was not in the handwriting of the



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Appellant as well as the sellers of the land, obviously such loose sheets can only be in the nature of a dumb document. The AO cannot arrive at any conclusion based solely on the said material that the Appellant and her spouse have actually paid on-money payment for purchase of property. There is no corroborative evidence to prove that the payments noted in the seized material have actually materialised and transfer of money has actually taken place between the concerned parties.

6.3.21 The AO in the assessment order has relied upon the statement recorded from Shri. Balakrishnan Ramamoorthy to arrive at a conclusion that the Appellant has paid an amount of Rs. 51.75 Crores to acquire share held by Shri. Sathynarayan in M/s. Jyothirmaya Estates. In this regard the Appellant in the written submission, has agitated upon the addition made based upon the statement recorded from third party and without providing any opportunity of cross examination and relied upon various judicial decisions. It is a settled law that a statement of a third party cannot be unilaterally utilized against the Appellant as evidence to frame the assessment. Statements of third parties with regard to the noting on loose sheets seized in the course of search of their premises relating to transaction of on-money without their adverse statement being tested in cross-examination by the affected party and in the absence of any supporting evidence cannot be made the basis for addition of undisclosed income in the hands of the assessee. This was so held in the case of Prarthana Construction (P.) Ltd. v. Dy. CIT [2001] 118 Taxman 112 (Ahd.-Trib.) (Mag.).

6.3.22 In the case of CIT v. Ashwani Gupta [2010] 191 Taxman 51 (Delhi), addition was made on the basis of the statement of a third party. Copies of the seized documents were not provided to the assessee. No opportunity of cross-examination of the adverse party was given before utilisation of his statement. On these facts, following its own judgment in the case of CIT v. SMC Share Brokers Ltd. [2007] 159 Taxman 306 (Delhi), the High Court deleted the addition on the premise that there was violation of the principles of natural justice.

6.3.23 In a case, in the course of search of the assessee, certain loose papers were seized indicating advance of money and earning of interest. The assessee stated that the papers belonged to his daughter. This was denied by the daughter in her statement. Therefore, addition of the amounts was made in the assessee's hands. On these facts, in CIT v. S.M. Aggarwal [2007] 162 Taxman 3 (Delhi), it was held that the statement of a third party (ie, daughter of the assessee) not subjected to cross-examination cannot be considered relevant or admissible. In



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the absence of any corroboration by cross-examination, it was held that the seized document was a dumb document. The addition was deleted.

6.3.24 In the case of *Bangodaya Cotton Mills Ltd. v. CIT* [2009] 182 Taxman 151 (Cal.), additions were made on the basis of some documents (correspondence) relating to a property transaction seized from the premises of a third party. The order was set aside as no opportunity of cross-examination of the connected parties, particularly when it was the case of the assessee that these documents were forged, was afforded.

6.3.25 In the case of *Prakash Chand Nahta v. CIT* [2008] 170 Taxman 520 (MP), it was held that no addition u/s 69 could be made based on the statement of a third party without affording opportunity of cross-examination of the adverse party. In this case, the assessee contended that the silver articles were purchased from 'R'. However, 'R' denied the transaction in his statement recorded behind the back of the assessee. The Assessing Officer made the addition without allowing cross-examination of 'R'. Copy of the statement of 'R' recorded was not provided to the assessee. The Assessing Officer also ignored the affidavit filed by the assessee. He solely relied on the statement of 'R' for the addition. The addition was deleted.

6.3.26 In the case of *B. Ramakrishnaiah v. ITO* [2010] 39 SOT 379 (Hyd.-Trib.), the Assessing Officer made addition of a certain amount in the hands of the assessee based on the entry of a transaction relating to a property deal in the books of 'B' who was a third party. No opportunity for cross-examination was afforded to the assessee with reference to the material gathered from the third party. The Tribunal held that the Assessing Officer cannot base his assessment on the statement and material collected by him to frame the assessment without affording opportunity of cross-examination. The Tribunal did not accept the plea of implied affording of opportunity advanced by the department that the statement of the assessee was recorded on the same issue. The addition was deleted.

6.3.27 In the case of *M. Anpukutty v. State of Kerala* [1964] 14 STC 489, it was held that the entries in the name of the assessee in the books of account of a third party would not give jurisdiction to the Assessing Officer to frame the assessment by utilising such material unilaterally unless the assessee was afforded opportunity to cross-examine the said party. The assessee can question the said party to



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explain as to how the relevant entry was made in its books and its nexus with the assessee.

6.3.28 The undersigned observes that the AO in the assessment order has merely relied upon the statement and arrived at a conclusion that the Appellant has paid the amount by way of cash to acquire 50% shares in M/s. Jothirmayee Estates. Further the AO, has also failed to bring it on record the retraction statement recorded from Shri Javvaji Ramanjenyulu on 05.07.2019. The relevant portion of the answer to question no. 22 is reproduced as under :-

.....

6.3.29 In this regard the jurisdictional tribunal in the case of ACIT v. Saveeta Institute of Medical and Technical Sciences [2012] 25 taxmann.com 138 (Chennai -Trib) has held that addition made on the basis of the sworn statement recorded u/s 132(4) of the Act cannot be sustainable and further held that the admission made u/s 132(4) by the Special Officer of the College could not even be treated as a valid piece of evidence. In the present case, the statement recorded u/s 132(4) of the act was subsequently retracted in the statement recorded u/s 131 (1a) of the Act.

6.3.30 In the case of Shri. Ganesh Trading Company v. CIT [2013] 30taxmann.com170/214 Taxmann 262 (Jharkhand), the Court has held that a statement made u/s 132(4) of the Act is a piece of evidence but the same is not conclusive particularly because it is self-incriminating. Accordingly it was concluded that no liability could be fastened solely on the basis of sworn statement. In arriving at this decision, the Court followed the judgement in the case of Kailashben Manharlal Choski v. CIT [2010] 174 Taxmann 466( Guj) .

6.3.31 Further the Hon'ble Apex Court in the case of Pullangode Rubber Produce Co Ltd v State of Kerala [1973] ITR 18 (SC) has held that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive and further observed that it is open to the person who makes the admission to show that it is incorrect. At the outset it can be stated that where the admission is tied up with incriminating evidence found in the course of search, the principle laid down by the Apex Court will no longer hold good. Obviously, in the absence of evidence an admission can no longer be an evidence to support any addition.

6.3.32 In addition, the Apex Court in the case of Kasmira Singh v. State of Madhya Pradesh AIR 1952 SC 159, has observed that the correct way to approach a case of confession is to marshal evidence against the accused excluding the confession altogether from consideration. Where the case can be decided independent of confession, then, it is not necessary to take help of confession.



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6.3.33 Thus, in the instant case of the Appellant, it can be stated that the AO has primarily relied upon the statement(s) recorded from the third parties and the loose sheets seized, during the course of search at third party premise and utilized the same in making the addition in the hands of the Appellant without bring any cogent and corroborative evidence on record. In view of this the addition contemplated by the AO based upon such evidences can no longer be sustainable upon merits.”

**12.** The Ld. CIT(A), thereafter, held that, even the satisfaction-note recorded by the AO was defective, as the noting’s found in the loose sheet could not be said to pertain or relate to the assessee and therefore the assumption of jurisdiction u/s 153C of the Act was also held to be invalid. Now the Revenue is in appeal before us.

**13.** Assailing the action of the Ld. CIT(A), the Ld. CIT, DR appearing on behalf of the Revenue, vehemently supported the findings recorded by the AO. Taking us through the statement of Shri Balakrishnan Ramamoorthy in light of the noting’s found on loose sheets ID marked ANN/NN/JR/LS/S Pages 267, 276 to 279 seized from the premises of Shri Javvaji Ramanjenyulu, he argued that, the figures mentioned in the noting’s stood correlated with the deposition given by Shri Balakrishnan Ramamoorthy and that, one could make out from the figures mentioned that, payment of Rs.9.10 crores and Rs.41.75 crores was made by the assessee, out of which the former was by cheque and the latter in cash. According to him therefore, the AO had rightly made the impugned addition. He further submitted that, the burden was on the assessee to show that the statement given by Shri Balakrishnan Ramamoorthy was



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inadmissible and that simply because the assessee was not afforded opportunity cross-examine would not render his statement to be unreliable, particularly when he had confirmed his original statement in the post search enquiries as well. On the validity of assumption of jurisdiction u/s 153C of the Act, he submitted that, the Ld. CIT(A) did not dispute the fact that the satisfaction note was recorded prior to issue of notice u/s 153C of the Act dated 25.01.2021 and therefore the same could not be held as defective. He further contended that the contents of the satisfaction note made it clear that, the noting's found in loose sheets ID marked ANN/NN/JR/LS/S contained entries which pertained or related to the assessee, and which was further corroborated by the statements of Shri Javvaji Ramanjenyulu & Shri Balakrishnan Ramamoorthy and therefore, according to him, the Ld. CIT(A) was unjustified in holding the issuance of notice u/s 153C of the Act to be bad in law.

**14.** The Ld. AR, on the other hand, supported the order of Ld. CIT(A). He first invited our attention to the noting's found on loose sheets ID marked ANN/NN/JR/LS/S basis which the satisfaction note was recorded by the AO. He showed us that, these notings were rough scribbings, which did not contain any names, details of payer or payee or any other specifics, basis which a prudent person could suggest that it related to the assessee. He further invited our attention to provisions of Section 132(4) of the Act and argued that, the authorized officer was empowered to



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question the person from whose possession and control these documents were found. He brought to our notice that, these loose sheets were found from the possession of Shri Javvaji Ramanjenyulu, and as already noted by us (supra), this person had nowhere named or implicated the assessee in relation to these noting's. The Ld. AR emphasized that, even in the later statement dated 05.07.2019, Shri Javvaji Ramanjenyulu had pleaded ignorance of the noting's on these loose sheets, and had not incriminated the assessee in any manner. According to him therefore, when the noting's on the loose sheets itself was bald and lacking any specific details and the person from whose possession it was found, was also unable to explain the same, the Ld. CIT(A) had rightly concluded that these noting's did not pertain to the assessee and therefore the AO could not have validly assumed jurisdiction u/s 153C of the Act. He, thereafter, pointed out to us, that the entire case of the AO in fact rested on the testimony of Shri Balakrishnan Ramamoorthy dated 22.02.2019 & 08.07.2019, which was used by the authorized officer to interpret these loose notings. He contended that, the purported correlation drawn by the authorized officer based on the testimony of Shri Balakrishnan Ramamoorthy linking the figures with the loose noting's found in loose papers ID marked ANN/NN/JR/LS/S was a pure guesswork and not based on any tangible material. The Ld. AR reminded us that, these loose papers were not found from the possession or control or premises of Shri



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Balakrishnan Ramamoorthy and therefore using his testimony to infer the contents of these noting's was arbitrary and so, unjustified.

**15.** The Ld. AR additionally placed before us, the details of the litigation between the related parties of the assessee and Shri Balakrishnan Ramamoorthy, which began much prior to the date of search i.e. 31.12.2019. He particularly invited our attention to the recent order passed by the Hon'ble Madras High Court in Criminal Original Petition No. 30501 of 2018 & 2690 of 2019 dated 18.10.2023 wherein qua this same deal involving M/s Jyothimaye Estate, the Hon'ble High Court after examining the material including the MOU (referred by Shri Balakrishnan Ramamoorthy in his depositions dated 22.02.2019 & 08.07.2019) found that the claims made by Shri Balakrishnan Ramamoorthy to be frivolous and that he had played fraud by cheating and committed criminal breach of trust to cause wrongful loss and that, there was no such agreement between the parties and also that, no such cash transactions had taken place between them. The Ld. AR argued that, even if the aforesaid decision of Hon'ble Madras High Court is kept aside for a moment, the fact that, there was dispute/litigation between the assessee and Shri Balakrishnan Ramamoorthy clearly showed that, Shri Balakrishnan Ramamoorthy was a biased person who has an axe to grind, according to him, would have on purpose, made false & frivolous statements against the assessee due to the animosity between them. He thus submitted that,



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this was a classic case where any person for that matter can mention anyone's name in relation to any loose paper / diary at their sweet will and which can be used to implicate such other person for no fault of the latter. He accordingly urged that, the impugned addition was unsustainable and that the Ld. CIT(A) had rightly deleted the same.

**16.** We have heard both the parties and perused the material on record placed before us. In the several grounds raised in the appeal, the Revenue has agitated the Ld. CIT(A)'s action of holding the invocation of jurisdiction u/s 153C of the Act to be invalid and also deleting the addition of Rs.51.75 crores made by way of unexplained investment u/s 69 of the Act on merits. We first take up the legal issue of jurisdiction of the AO to assess the assessee u/s 153C of the Act. The legal challenge is against the action of the AO *inter-alia* to validly usurp jurisdiction u/s. 153C of the Act without satisfying the mandatory condition precedent prescribed by Section 153C of the Act i.e. the AO has not recorded a valid satisfaction note before assumption of jurisdiction u/s 153C of the Act.

**17.** Section 153C of the Act is a special provision for assessment of income of 'any other person', who is a third party not searched by the department but shall be assessed in the manner prescribed u/s. 153A of the Act, provided the AO is satisfied that —

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or



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(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A.

**18.** We find that, it is now a settled position of law that, the AO of the non-searched person (assessee, in this case) can issue notice u/s 153C read with 153A of the Act, only when he is satisfied, from a perusal of the books of account or documents or assets seized or requisitioned from the premises of searched person (Shri Javvaji Ramanjenyulu, in this case), that it had a bearing in the determination of the total income of the non-searched person, i.e. the assessee. The satisfaction of Assessing Officer should be objective and has to be based upon cogent material. The reason for it is that, section 132(4A)(i) of the Act clearly stipulates that, when *inter alia* any document is found in the possession or control of any person in the course of a search, it may be presumed that such document belongs to such person (the searched person). The presumption as to asset, books of accounts, etc. is governed by section 292C(1)(i) of the Act which presumes that the same belong or belongs to the person from whom the said assets/documents were found during the course of search u/s. 132 or survey u/s. 133A of the Act. In other words, whenever an asset/document is found from a person who is being searched, the normal presumption is that the said asset/document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the asset/document in fact



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belongs/pertains/relates to somebody else (third party like assessee in this case). There must be some cogent material available with the Assessing Officer, which was unearthed during search, basis which he/she arrives at the satisfaction that, the contents of the seized asset/document does not relate to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction' and the same interpretation has been given by various courts.

**19.** In this context, we gainfully rely on the decision of the Hon'ble Apex Court in the case of **CIT Vs Singhad Technical Education Society (397 ITR 344)**, wherein the Hon'ble Supreme Court upheld the decision of the Hon'ble Bombay High Court reported in 378 ITR 84 by observing that, unless and until the AO can establish document-wise (or asset wise) correlation between what has been seized from the 'Searched person' - and - how the same is incriminating in nature qua each of the assessment years in question for which jurisdiction u/s. 153C is sought to be invoked for the 'other Person' - then the notice issued under section 153C to the assessee qua the said assessment year would be without the satisfying the jurisdictional fact required to invoke section 153C of the Act. We draw our attention in this regard to the following excerpts of the decision of the Hon'ble Supreme court in **Sinhgad Technical Education Society's case (supra)**, wherein their Lordships took note of the Hon'ble High Court's findings while confirming Tribunal's view, which is as under: --



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"6. The tribunal has found that incriminating material seized and stated to be pertaining to all six assessment years did not establish any correlation document-wise with the assessment year in question. In other words, the tribunal concluded that the present matter indicates that the issue of notice could be on the basis that there is specific incriminating information in possession of the Assessing Officer. It is in these circumstances that the tribunal found and as indicated in paragraph 8 of the impugned order that the revenue's assertion that the Assessing Officer is empowered under the statute to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted and therefore the satisfaction which is recorded in the satisfaction note is enough, is erroneous. Therefore, the notice cannot be upheld and such stand of the revenue cannot be accepted. The reasons, therefor are to be found in paragraph 9 and 10 of the impugned order. If certain items pertain to assessment year 2004-05 or thereafter then it cannot be assumed, that the documents seized or incriminating material giving information are specific and to all assessment years. The tribunal found that they were concluded assessments. They could not have been disturbed. The documents in question are neither incriminating ones nor unaccounted transactions of the assessee. They also did not relate to the four assessment years. It is in these circumstances that the tribunal found that it will not be possible to uphold the stand of the revenue that overall approach in matters of concealment by the group assessee and all the discoveries of the search on Shri Navale and it concerns, will have to be taken into account while forming the satisfaction. The satisfaction note was very closely examined and the reasons assigned by the Assessing Officer were found to be silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note is not enough. The tribunal has found that with regard to cash and jewellery, the explanation of the assessee was that he had agricultural properties and derived agricultural income. That income was utilised to acquire jewellery that was belonging to him and his family. With regard to cash and stated to be recovered from the students for granting admissions, we do not find that any inquiries were made. There is absolutely nothing to indicate as to in which educational courses, the education is imparted and institution-wise. Whether the admissions are granted to the technical courses merit-wise or on the basis of marks obtained in XIIth standard HSC exam. If any fee structure is approved and cash component is therefore collected over and above the sanctioned fees are matters which ought to have been gone into and there cannot be a general or vague satisfaction as is relied upon.



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9. We are of the opinion that the tribunal's conclusion cannot be termed as perverse and given the above-noted factual background. None of these appeals raises any substantial question of law. They are accordingly dismissed. No costs."

**20.** And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court by observing as under:

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy." (Emphasis supplied)

**21.** In the light of the above legal position, we now revert back to the facts of the present case. In order to test the validity of the jurisdiction of AO to legally usurp the jurisdiction u/s. 153C against a third party who



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has not been searched, we have to ascertain whether Assessing Officer satisfied the condition-precedent before issue of notice u/s. 153C of the Act, for which we need to examine the contents of the satisfaction note.

**22.** It has to be kept in mind that, when the challenge is to the validity of the satisfaction note which, the AO has recorded to assume jurisdiction, we have to examine the satisfaction recorded as it is. There are case laws which throws light in the context of examining the legal validity of Satisfaction recorded by the AO while re-opening the assessment u/s. 147 of the Act. It is settled law that reasons as recorded for reopening the reassessment are to be examined on a 'stand-alone' basis. Neither anything can be added to the reasons so recorded nor anything can be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 Taxman 479/268 ITR 332** wherein their Lordships have, inter alia, held *"it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons."* Their Lordships added that *" the reason recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the evidence....."*. Therefore, reasons are to be examined



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only on the basis of reasons as recorded by the AO. This analogy/ratio decidendi of the Hon'ble High court is applicable to the 'Satisfaction-Note' prepared by the AO when he recorded his satisfaction note in respect of a third person (assessee in this case) against whom he/AO proposed to invoke the special provision and issue notice under section 153C of the Act.

**23.** In light of the above legal position, we now revert to the facts involved in the present case. It is noted that, the foundational premise of the satisfaction note was the loose papers marked as ANN/NN/JR/LS/S seized from the premises of Shri Javvaji Ramanjenyulu. The AO is observed to have merely relied upon the obscure noting's made in the loose papers, and the statements of Shri Javvaji Ramanjenyulu & Shri Balakrishnan Ramamoorthy to draw his conclusion that the noting's on these loose papers pertained to the assessee, in order to assume jurisdiction u/s 153C of the Act. Having perused these loose noting's in light of their statements, we find that, the conclusions drawn by the AO are not forthcoming from the documents and statements, and the analysis is not supported by any corroborative evidence. It is observed that, the Pages 267, 276 to 279 of document ID marked ANN/NN/JR/LS/S contained rough noting's of figures and that there was no details of payer or payee. Also, there were no sign or signature or acknowledgment by the assessee, or that, any abbreviation etc. was mentioned which would



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suggest the noting's to be remotely relating to the assessee. More particularly, we note that, the person (Shri Javvaji Ramanjenyulu) from whose possession and control these loose papers were found had initially explained these noting's to be relating to one M/s Bhavya Construction Co. and had also undertaken to correlate the noting's with their books of accounts and that in case of any discrepancy, he would offer the same to tax as his own undisclosed income. We therefore note that, the presumption laid down in Section 132(4A) of the Act that the documents found in the course of search shall be presumed to belong to the searched person, was reinforced by the searched person (Shri Javvaji Ramanjenyulu, in this case) in his deposition recorded u/s 132(4) of the Act dated 21.02.2019. At the cost of repetition, the relevant excerpts of the searched person from whose possession these loose sheets were found is reproduced hereunder: -

" Q. No. 24 I am showing you loose sheet documents vide ANN/NN/JR/LS/S in pg nos. 276 to 279 seized from your residential premises during the course of search u/s 132 of the Income Tax Act, 1961 containing certain amounts representing Principal along with interest workings and also certain amounts and also certain amounts shown as paid. Kindly go through the same and explain the transactions.

Ans. I have gone through the said documents carefully. This is regarding the discussions regarding the sale of shares of M/s Bhavya Constructions company between the partners. I am unable to recognize the handwriting and I am not aware who has written down the same. These are calculations that have been made which can be corroborated from the books of accounts of all shareholders. If the same cannot be explained, I shall offer the amounts mentioned herein as undisclosed income if I am not able to explain the same."

**24.** We also note that, later on, Shri Javvaji Ramanjenyulu in his statement recorded u/s 131 of the Act dated 05.07.2019 had although



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retracted his original statement and submitted that, he had under a mistaken impression presumed these noting's to relate to M/s Bhavya Construction Co., but, at the same time, he clearly pleaded ignorance of the contents of these loose sheets since they were not in his own handwriting and therefore he expressed his inability to explain the same. The searched person, Shri Javvaji Ramanjenyulu is noted to have simply rejected the ownership of these loose papers by stating that they do not pertain to him or his related business entities, which we find was accepted by the Revenue at face value. The relevant portion of his statement, is again being reproduced below: -

"The loose sheets stated in the above paragraph having placed before me once again for my comments a fresh. In this regard the essential character of these loose sheets is such that they are written by an unknown person and there are no details of Payer or payee and there are no details to whom it pertains to and finally these does not provide any guidance or inference that is meaningful from the examination of the same. While at the time of search the pressure under which I was giving the statement though I could not recognize the hand writing as well as the underline numbers I thought it could be relating to transactions of M/s. Bhavya Constructions which I now conclude that my inference is incorrect and I completely deny the answer that was provided at the time of search and the answer that is provided now shall replace the same.

Further it may be appreciated that during the course of search various materials have been seized pertaining to various business entities where I am either a partner or a director or has some business interest. **The review of all the material together with sheets mentioned in this question does not even remotely corroborate to any kind of underlying transaction that can be assumed to have been undertaken by me or my family members. In other words, these loose sheets referred in this question remain an unrelated and irrelevant to my business or personal transactions. Thus the sheets should not be reckoned to have any relevance to me."**

**(emphasis supplied)**



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**25.** From the above narrated facts, it is therefore observed that, not only were the noting's on loose sheets obscure in as much as it cannot be deduced whether they are receipt or payments, nor it can be concluded whether they are in relation to any particular transaction or, who were the payer or payee. Also, the searched person from whose possession these loose sheets were found was not able to explain the contents of the same properly. The decisive observation from the above narrated facts is that, neither the loose sheets nor the statement of searched person in any manner incriminated the assessee or was there any suggestion that the noting's therein pertained or related to the assessee. On these facts, we find merit in the Ld. CIT(A)'s finding that, the satisfaction-note recorded by the AO on the basis of these loose papers and statement of Shri Javvaji Ramanjenyulu suffered from fundamental infirmity, as there was no document-wise correlation between what has been seized from the searched person and how was the same incriminating in nature qua the assessee. We thus countenance the following findings of the Ld. CIT(A):-

"6.5.2 The Appellant upon receipt of the copy of satisfactory note and the seized material relied upon by the AO to initiate proceedings against the Appellant raised additional grounds agitating upon the issue of defective satisfaction recorded. The issue raised by the Appellant has been carefully examined. The AO in the satisfaction note recorded before initiating proceedings u/s 153C of the Act has relied upon the noting contained in the loose sheet seized vide ANN/JR/LS/S dated 23.02.2019 seized from a third party premise. The said seized loose sheet was seized from the residence of Shri Javvaji Ramanjenyulu did not reveal to have any nexus with the Appellant. Further as brought out by the Appellant in the written submission about the statement recorded from Shri Javvaji Ramanjenyulu on the date of search u/s



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132(4) on 21.02.2019 to 23.02.2019 wherein the Authorised officer sought his explanation about the loose sheet seized vide ANN/NN/JR/LS/S in pages 266-279, wherein he has categorically admitted as under :-

" Q. No. 24 I am showing you loose sheet documents vide ANN/NN/JR/LS/S in pg nos. 276 to 279 seized from your residential premises during the course of search u/s 132 of the Income Tax Act, 1961 containing certain amounts representing Principal along with interest workings and also certain amounts and also certain amounts shown as paid. Kindly go through the same and explain the transactions.

Ans. I have gone through the said documents carefully. This is regarding the discussions regarding the sale of shares of M/s Bhavya Constructions company between the partners. I am unable to recognize the handwriting and I am not aware who has written down the same. These are calculations that have been made which can be corroborated from the books of accounts of all shareholders. If the same cannot be explained, I shall offer the amounts mentioned herein as undisclosed income if I am not able to explain the same."

6.5.3 From the above deposition it is very clear that the seized material relied upon by the AO in recording the satisfaction note is defective in nature. It is a settled law that for initiating proceedings u/s.153C, recording of satisfaction note is mandatory and in the absence of the same, the entire proceedings would be void ab-initio. The same was held by the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears [2014] 362 ITR 673 (SC). Wherein the Hon'ble Apex Court had at paragraph 44 of its order held that;

"44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer before he transmits the records to the other assessing officer who has jurisdiction over such other person."

**26.** The Ld. CIT, DR before us laid much emphasis on the statement of Shri Balakrishnan Ramamoorthy and has contended that reading of his statement would demonstrate correlation between the noting's found in the loose sheets with the satisfaction drawn by the AO u/s 153C of the



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Act. Accordingly, we find that, the case of the Revenue hinges solely on the statement of Shri Balakrishnan Ramamoorthy dated 22.02.2019 & 08.07.2019. Before examining his statement, it is relevant to keep in mind the contemporaneous fact that, these loose papers, on the basis of which assumption is being sought to be assumed by the AO u/s 153C of the Act were not found from the possession or control of Shri Balakrishnan Ramamoorthy in the course of search conducted upon him. As noted earlier, on the same date, on which Shri Javvaji Ramanjenyulu was searched, Shri Balakrishnan Ramamoorthy was also searched at his residential premises. In his statement, he had made reference to a certain settlement, to which, according to him, the assessee was also a party to, and towards which he claimed that the assessee had paid cash of Rs.26 crores. The Ld. AR has rightly pointed out that the Q No. 26 to which, Shri Balakrishnan Ramamoorthy gave the foregoing answer was not put up to him with reference to the loose papers ID marked ANN/NN/JR/LS/S (Pages 267, 276 to 279). It is also observed that, in the later statement, in his answer to Q No.7 (*already reproduced earlier*), Shri Balakrishnan Ramamoorthy had divulged further details regarding this settlement giving specific dates and amounts along with names of several persons involved therein, but he was unable to produce any proof or evidence to back his allegations against the persons named by him. We again take note of the fact that, even this answer was never given in relation to



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loose papers ID marked ANN/NN/JR/LS/S (Pages 267, 276 to 279). We thus find ourselves in agreement with the Ld. AR that, it is not comprehensible as to how were these answers given Shri Balakrishnan Ramamoorthy taken as a basis to draw satisfaction qua the seized material from the possession and control of Shri Javvaji Ramanjenyulu.

**27.** Rather we find that it was the authorized officer who had undertaken permutations and combinations to correlate the figures mentioned by Shri Balakrishnan Ramamoorthy in his statements with the loose noting's found from the premises of Shri Javvaji Ramanjenyulu and thereafter himself inferred that, these noting's pertained to the assessee, which we find to be far-fetched based on pure guesswork having no cogent basis and lacking any corroborative material to back the same. According to us therefore, even the statement of Shri Balakrishnan Ramamoorthy did not carry any evidentiary value to correlate the noting's found in loose sheets ID marked ANN/NN/JR/LS/S qua the assessee so as to assume jurisdiction u/s 153C of the Act. Moreover, the statements of Shri Balakrishnan Ramamoorthy was evidently biased & unreliable, for reasons which we have discussed in detail (infra), and hence, the AO was unjustified in relying on such self-serving statement to draw his presumptuous inferences qua the seized material.



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**28.** It is reiterated at this juncture that, to assume jurisdiction u/s 153C of the Act, the AO is required to demonstrate that, any '*books of account*' or '*documents*', seized or requisitioned, pertains or pertain to, or any information contained therein, relates to another person, apart from the person searched. Having regard to our above discussions, we are of considered view, that the '*loose papers*' found from the premises of Shri Javvaji Ramanjenyulu (searched person) did not pertain to the assessee nor did the information contained therein relate to the assessee. Even the searched person, as noted above, had never stated so in his depositions dated 21.02.2019 & 05.07.2019. Further, the statement of Shri Balakrishnan Ramamoorthy, who though was searched at the same time, was neither found to be in possession or control of the seized material impugned before us and even his depositions were not with reference to the impugned seized material. According to us therefore, no prudent person properly instructed in law could have inferred the seized material marked ID ANN/NN/JR/LS/Sto relate or pertain to the assessee. Therefore, the assertion of AO in the '*Satisfaction Note*' that these are incriminating material qua the assessee qua AY 2016-17, does not have any legal basis/evidence/material, and therefore the finding of fact by AO in this respect in the satisfaction note, is held to be perverse and erroneous.



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**29.** Overall therefore, since there was no incriminating material pertaining or relating to the assessee which has been unearthed/seized during the search conducted on 21.02.2019 from the premises of Shri Javvaji Ramanjenyulu, the satisfaction note prepared by the AO does not satisfy the requirement of law as stipulated u/s. 153C of the Act and since the legal requirement has not been met in the "satisfaction note" recorded by the AO, the very assumption of the jurisdiction for AY 2016-17 is held to be bad in the eyes of law as held by the Hon'ble Supreme Court in the case of **CIT v. Sinhgad Technical Education Society (supra)** and, therefore, we uphold the Ld. CIT(A)'s order on this aspect quashing the order impugned before us.

**30.** We also find merit in the alternate contention of the Ld. AR for the assessee that, the impugned satisfaction note was made out on the basis of '*loose sheets*', which does not come under the ambit and scope of '*books of entry*' or as '*evidence*' under the Indian Evidence Act, 1872. For this, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of loose sheets in the case of **V.C. Shukla [1998] 3 SCC 410**, wherein at paragraphs 16 to 18 of the judgment, it was observed as under:

"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;



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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



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whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S.34."

**31.** The aforesaid observations are noted to be in accordance with good reasoning and we are in full agreement with it. Applying the above tests, it must be held that the loose sheets ID marked ANN/NN/JR/LS/S Pages 267, 276 to 279 cannot be regarded as '*books of accounts*' or '*documents*' seized in course of search. We also gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Common Cause (A Registered Society) Vs Union of India (394 ITR 220)** wherein at paragraphs 278 to 282 of the judgment, it has been observed as under:

"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



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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 payments were made. In fact the entries there in are on a 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 a regular account book, this Court has laid down in V.C. Shukla, thus: (SCC p.433, para 37) "37. In Beni v. Bisan Dayal [AIR 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



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to support his claim against another. In Hira Lal v. 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 prove, 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 re 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 the 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."

**32.** From the above, it is established in law by the Hon'ble Apex Court that a sheet of paper containing rough scribblings in loose form, not shown to form part of the books of accounts regularly maintained by the searched assessee or his business entities, cannot be said to constitute material evidence. Following the law declared by the Hon'ble Apex Court, we are of the view that the notice dated 25.01.2021 issued by the AO u/s 153C of the Act for the relevant year was bad in law.

**33.** We now come to the grounds raised by the Revenue challenging the Ld. CIT(A)'s order for deleting the impugned addition on merits. As noted above, the addition made by the AO was based on the noting's found on loose papers ID marked ANN/NN/JR/LS/S and statements of Shri Javvaji



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Ramanjenyulu & Shri Balakrishnan Ramamoorthy. Before adverting to the contents of the noting's, which forms basis of the impugned addition, it is necessary to keep in mind that the presumption u/s 132(4A) of the Act regarding the contents of seized material is only against the searched person and not to any other third party, which is the assessee in the present case. Reason being that, if any noting's found in the seized material at third party premises is presumed to pertain to the assessee, at its face value, then any person for that matter can mention anyone's name in any loose paper / diary at their sweet will and that can be used to implicate such other person for no fault of the latter. Accordingly, an entry made in a diary or notebook by a third person with scant details cannot be used to fasten tax liability on the person, whose name appears therein, in the absence of corroborative evidence. Our view finds support in the decisions of the Hon'ble Supreme Court in the case of **C.B.I. v. V.C. Shukla (supra)** and **Common Cause (A Registered Society) Vs Union of India (supra)**.

**34.** We also gainfully refer to the decision of Hon'ble Punjab & Haryana High Court in the case of **CIT v. Khosla Ice & General Mills (2013 (1) TMI 451)**. In the decided case, the impugned loose papers were found to be non-speaking document in as much as it does not contain any intelligible narration in support of the inference drawn by the Assessing Officer that it reflected unaccounted transactions carried out by the



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assessee outside the regular books of account. It was held that, when a dumb document, is to be made the basis to fasten tax liability on the assessee, the burden is on the AO to establish with corroborative evidence, that the nature of entries contained therein reflect income. Thus, the AO has to establish, with necessary corroborative evidence, that various entries contained in the seized document reflect unaccounted transactions effected by the assessee. The Hon'ble High Court thus held that, in the absence of any material to support the nature and ownership of the entries found in the seized document, no addition is permissible as undisclosed income, by merely arithmetically totaling various figures jotted down on such document.

**35.** Useful reference in this regard is also made to the decision of the ITAT, Hyderabad in the case of **Sri Y. Siddaiah Naidu Vs ACIT 2015 (2) TMI 403 -ITAT** wherein it was held that, where from the loose notings, it cannot be deduced whether they are receipt or payments nor it can be concluded whether they are in relation to any particular transaction, then in such circumstances, no addition can be made on the basis of such document.

**36.** Similar view is noted to have been expressed by ITAT Mumbai in the case of **ACIT v. Layers Exports P. Ltd (88 taxmann.com 620)** wherein it was held that no addition could be simply made on the basis of



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uncorroborated notings in the loose papers found during the search because addition on account of alleged payment made simply on the basis of uncorroborated noting and scribbling on loose sheets made by some person has no evidentiary value and is unsustainable and bad in law.

**37.** Having regard to this position of law, we now advert to the noting's found in the seized loose papers ID Marked ANN/NN/JR/LS/S, Pages 267, 276 to 279 from the premises of Shri Javvaji Ramanjenyulu. The seized material which is placed on record shows certain jottings of figures. It does not contain details of any payer or payee or particulars of any specific deal or transaction. There is absolutely no mention in the seized material regarding the nature of the said transaction of cash payments, the purpose of such payments and precise identity of the transaction. We therefore find it very strange to believe that these noting's relate to the assessee as it also does not contain any attestation from the assessee's side, being not having any name or seal of the assessee. No other incriminating evidence was found in the course of search conducted upon Shri Javvaji Ramanjenyulu which would correlate or justify these notings. The Ld. AR has rightly pointed out that, even in the earlier search conducted upon the assessee on 08.12.2016, no incriminating material was found to suggest that it had paid any cash for acquiring stake in M/s M/s Jyothirmayee Estate. Being so, we hold that, no credence can be given to these vague loose notings. In absence of any



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corroborative evidence to attribute the entries to the non-searched person i.e. the assessee. We find that, the Ld. CIT(A) had rightly treated these loose papers as dumb noting's having no evidentiary value in respect of entries found therein. Before us also, the Revenue was not able to show any corroborative evidence available with them which would provide necessary reliable basis for deciphering the nature and character of the said entries.

**38.** Rather we find that the entire premise of the Revenue is based sheerly on guess work by shooting arrows in the dark. Clearly, the noting's considered on a stand-alone basis are obscure and non-speaking. On overall conspectus of facts, it appears that, even the Investigating authorities were not able to make out any meaning out of these noting's and the searched person (Shri Javvaji Ramanjenyulu in this case) from whose possession and control these noting's were found, in his statement dated 21.02.2019, was also not able to explain the same but guessed that it may pertain to one of their transaction relating to M/s Bhavya Constructions. It is observed that, later on, when examining the answer given by one Shri Balakrishnan Ramamoorthy (statement dated 22.02.2019) in the context of some settlement claims *inter alia* with the assessee that, the authorized officer is noted to have undertaken a permutation & combination exercise and inferred that some of the figures jotted in these loose sheets correlated with the settlement matters



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averred by Shri Balakrishnan Ramamoorthy. The Authorized Officer is accordingly noted to have again examined the searched person (Shri Javvaji Ramanjenyulu) from whose possession and control, these noting's were found on 05.07.2019, who, this time around submitted that, these noting's did not relate to M/s Bhavya Constructions but at the same time, he was unable to explain the context of these noting's. Rather he distanced himself from it by submitting that it did not relate to him. Then again, the authorized officer examined Shri Balakrishnan Ramamoorthy on 08.07.2019 and prodded him regarding the details of the settlement matters with the assessee and this time he is noted to have divulged further details giving several figures and several names involved in the settlement, albeit without any proof or evidence. The authorized officer again correlated these details with the noting's found on the loose sheets ANN/NN/JR/LS/S Pages 267, 276 to 279 and inferred that certain noting's aggregated to Rs.9.10 crores, which was paid by the assessee to Shri R. Satyanarayana for acquiring stake in M/s Jyothirmayee Estate. Accordingly, he inferred that the balance noting's related to the out of books payments of Rs.41.75 crores made to Shri R. Satyanarayana in relation to this acquisition. Later on, based solely on the statement of Shri Balakrishnan Ramamoorthy, the AO further assumed that the assessee had also paid cash commission of Rs.10 crores for getting this deal



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facilitated, which led to the impugned addition of Rs.51.75 crores [Rs.41.75 crores + Rs.10 crores].

**39.** Having taken note of the above, we find that the entire exercise conducted by the AO to make the impugned addition on the basis of the noting's found in loose sheets was based on guesswork and conjectures. Clearly, the seized material showed vague figures presumed by the AO to be unaccounted transactions. These are unsigned documents and not supported by any corroborative material. Being so, the seized material relied by the AO for making the addition is not speaking one in itself and also not speaking in conjunction with some other evidence which the authorities found during the course of search or post search investigation. Thus, the well settled legal position is that a non-speaking document without any corroborative material or evidence on record and finding that such document has not materialized into transactions giving rise to income of the assessee which had not been disclosed in the regular books of accounts of the assessee has to be disregarded for the purpose of assessment to be framed pursuant to search and seizure action. In support of our foregoing conclusion, we gainfully refer to the decision of the Hon'ble Supreme Court, in the case of **Motors & General Stores (P.) Ltd. (66 ITR 692)** wherein it was observed that, *"it is, therefore, obvious that it is not open to the income tax authorities to deduce the nature of the document from the purported intention, by going behind the*



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*document or to consider the substance of the matter or to accept it in part and reject it in part or to rewrite the document, merely to suite purpose of revenue.*

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

- (i) Dhirajlal Girdharilal v. CIT [1954] 26 ITR 736 (SC)
- (ii) Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC)
- (iii) CIT v. Maharajadhiraja Kameshwar Singh of Darbhanga [1933] 1 ITR 94 (PC)
- (iv) Lalchand Bhagat Ambica Ram v. CIT [1959] 37 ITR 288 (SC)
- (v) Umacharan Shaw & Bros v. CIT [1959] 37 ITR 271 (SC)
- (vi) Omar Salay Mohamed Sait v. CIT [1959] 37 ITR 151 (SC)

**41.** We particularly find the reliance placed by the Ld. CIT(A) in support of his above findings on the decision of the Hon'ble Delhi High Court in the case of **CIT v. Sant Lal (423 ITR 1)** to be of relevance. In this case, the Department relied upon the noting's of hundi in the diary seized from the premises of third party. The said noting's allegedly contained entries of hundi transactions on behalf of parties including assessee whose names were written in abbreviated/code words. The Hon'ble Delhi High Court relying on its earlier decision in the case of **CIT v. Mahabir Prasad**



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**Gupta in ITA No. 814 of 2015 dated 20-10-2015** is noted to have held that no addition can be made in the hands of an assessee on the basis of any diary seized during the course of search proceedings of a third party, since such diary was neither found at the assessee's premise and that the department had failed to provide any cogent material or gather any corroborative evidence to substantiate that it pertained to the assessee. The Court observed that the searched person could have written anyone's name on his own sweet will in his diary and therefore such noting on stand-alone basis along with the biased statement of the searched person cannot be used as a reliable evidence against the assessee.

**42.** For the above reasons, we therefore concur with the Ld. CIT(A) that the noting's found in loose papers from third party premises cannot be unilaterally used to make addition in hands of the assessee, and that the onus is on the Revenue to establish the veracity of the same with corroborative evidence by bringing cogent material on record, to back the same, which we find the Revenue has failed to do so, in the present case.

**43.** Now we come to the statements of Shri Javvaji Ramanjenyulu & Shri Balakrishnan Ramamoorthy which was relied upon by the AO to justify the impugned addition. As noted earlier, the statements of the searched person (Shri Javvaji Ramanjenyulu) from whose possession and control, these noting's were found, did not incriminate the assessee in



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any manner. He had neither explained the noting's nor had he named the assessee at any point of time. Rather, he initially admitted that these noting's relates to his transactions in M/s Bhavya Constructions which he promised to correlate and provide the details later, but subsequently on 05.07.2019, he submitted under oath that, his initial statement was erroneous and that these loose sheets were not drawn up by him and therefore he was unable to explain its contents. We thus observe that, this statement of the searched person (Shri Javvaji Ramanjenyulu) cannot be used to draw any adverse inference against the assessee. Rather, it supports the assessee's case that these loose sheets contained dumb and obscure noting's which were not at all comprehensible and thus lacked any evidentiary value to justify the impugned addition in the hands of the assessee.

**44.** We now proceed to examine the statement of Shri B Ramamoorthy, which is the genesis of the impugned addition. It is noted that, Shri B Ramamoorthy had made certain statements as a logic for suggesting that cash payments were made by the assessee to Shri R Satyanarayana. It is further observed that, Shri B Ramamoorthy has made several claims of cash transactions being conducted by the assessee with several persons but no proof or evidence was adduced in relation to such averments. Before analyzing the contents of this statement, the Ld. AR has brought to our notice that, this person had made the same frivolous statements



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before the Hon'ble Madras High Court in connection with the complaint filed relating to Cheque Bounce Case, much prior to the date of search. We note that, the Hon'ble Madras High Court has adjudicated the said complaint case vide order dated 18.10.2023 wherein it has been held that, Shri B Ramamoorthy has simply stated concocted stories naming politicians and Government officials, which did not have any basis. It was further observed on analysis of the entire facts that, Shri B Ramamoorthy had acted in a dishonest manner to induce M/s Jyothirmaye Estate in which the assessee also held stake, to hand over their hard earned money to them and when they realized his fraud and breach of trust, they had stopped the cheque payments due to which, Shri B Ramamoorthy filed case under the Negotiable Instruments Act against the assessee raising frivolous claims. The Hon'ble High Court is noted to have categorically held that, there was no dealing in cash transactions and that the sum of Rs.46 crores claimed to have been transacted in cash by Shri B Ramamoorthy was never agreed to be paid and that it was absolutely false, frivolous and baseless. Having regard to these observations of the Hon'ble Madras High Court, it is clear that the statements of Shri B Ramamoorthy is false having no credence.

**45.** In view of our above findings, we thus agree with the assessee that the statement of Shri B Ramamoorthy not only suffered from serious bias qua the assessee, but it was also riddled with discrepancies, fancy



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theories and sensationalized claims, and that his statement was not backed by any evidence or proof. Shri B Ramamoorthy is noted to have misrepresented the facts and had distorted the same in his deposition for prejudicing the mind of the authorized officer. It is apparent from the facts discussed above that the statement given by Shri B Ramamoorthy was tainted with the sole intent to falsely implicate the assessee. Further, the above findings of the Hon'ble jurisdictional High Court shows that, Shri B Ramamoorthy was not a credible witness and therefore his statement was not reliable.

**46.** It is also observed that the AO prior to completing the assessment had not even given the copies of the statements of Shri B Ramamoorthy to the assessee leave aside an opportunity of cross-examination, given the fact that his statement was admittedly recorded behind the assessee's back. We do not countenance this action of the AO keeping the assessee in the dark by not furnishing the statement of Shri B Ramamoorthy and he should have been fair enough to give an opportunity to assessee to meet the allegation, if any, against the assessee, which according to AO, have been discovered during the search conducted upon Shri B Ramamoorthy. Further, the AO should have provided an opportunity to assessee to cross examine Shri B Ramamoorthy to test the veracity of his statement, which was also not done by AO. Had the AO acted in fairness and in accordance with principles of natural justice, the serious bias in the



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statement of Shri B Ramamoorthy, his false testimony etc., as discussed in preceding paragraph, would have come to the forefront at the time of assessment itself. By not providing the copy of statement used against the assessee and the opportunity of cross-examination, in our considered view, the impugned addition stood vitiated in law. For this finding of ours, we rely on the ratio of the decision of the Hon'ble Supreme Court in **Andaman Timber Industries v. CCE (62 taxmann.com 3)**. In the decided case, the addition was made against the assessee (Andaman Timber Industries) by the AO by relying on the statement of two witnesses namely Sri Sreeram Tekriwal and Sri Laxmidas Panchmati. Even though the assessee pleaded for cross-examination of these two witnesses, the AO did not give opportunity to the assessee and when the action of the AO was confirmed by the appellate authorities, the Hon'ble Supreme Court examined the omission on the part of the AO not providing opportunity to assessee to cross examine of two witnesses and held that it was a serious flaw and since the statements of those witnesses were made the basis of the impugned order this omission on the part of AO makes the order nullity inasmuch as it amounted to violation of principles of natural justice. Accordingly, in our considered view, the impugned addition made by the AO on the sole basis of the biased and unproven statement of Shri B Ramamoorthy was both unjustified and invalid.



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**47.** Overall, therefore, the purported notings on loose sheets and the statements of Shri Javvaji Ramanjenyulu & Shri Balakrishnan Ramamoorthy relied upon by the AO to justify the impugned addition is held to be unjustified both on facts and in law. For the reasons discussed above, we therefore find no reason to interfere with the order of Ld. CIT(A) deleting the impugned addition on its merits as well.

**48.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 28<sup>th</sup> day of February, 2025, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28<sup>th</sup> February, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF