आयकर अपीलीय अधिकरण, **'बी'न्यायपीठ, चेन्नई।**
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्रीएबीटी. वर्की, न्यायिक सदस्य एवं
श्री**अमिताभशुक्ला,** लेखासदस्य**केसमक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.1811/Chny/2024**
&
Cross-Objection No.69/Chny/2024
निर्धारणवर्ष**/Assessment Year: 2017-18**

The DCIT, Central Circle-2(4), Chennai.	**v.**	Gopu Rajagopal, 1211, 12th Floor, Phoenix Apartments, Velacherry-600 042.
		[**PAN: BBLPR 8282 G**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent/Cross-Objector)**
Department by	:	Mr.Nathala Ravi Babu, CIT
Assessee by	:	Mr.Vijay Mehta, CA
सुनवाईकीतारीख/Date of Hearing	:	05.12.2024
घोषणाकीतारीख /Date of Pronouncement	:	28.02.2025

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue& Cross-Objection preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter in short 'the Ld.CIT(A)'), Chennai-19, dated 30.04.2024 for the Assessment Year (hereinafter in short 'AY') 2017-18.

2. At the outset, the Ld.Counsel for the assessee submitted that there is a delay of '65' days in filing of Cross-Objection. Since assessee was prevented by sufficient cause, the Ld.Counsel for the assessee prayed for condonation of delay, for which, the Ld.DR didn't raise any serious objection and hence, we condone the delay of '65' days and proceed to adjudicate the Cross-Objection on merits.

3. 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.

2. The Ld.CIT(A) erred in deleting the addition of 11,50,00,000/- made as undisclosed income u/s.69A in respect of cash received by the assessee outside the books from the partners of M/s.S.R.S.Mining in the property transaction as evidenced by the material seized during the course of search In the case of M/s.S.R.S.Mining.

2.1 The Ld.CIT(A) erred in observing that the addition has been made without bringing any cogent or corroborative evidence on record, without appreciating that the addition was made on the basis of diary seized during the course of search in the case of M/s.S.R.S.Mining and the admission made by the assessee in his sworn statement recorded u/s.132(4) during the course of search in the residential premises of the assessee. The seized material and sworn statement u/s.132(4) corroborates each other.

2.2 The CIT(A) failed to appreciate that the assessee had not substantiated his claim that the amount received as advance had been returned. Further the assessee had admitted Rs.3.30 Crore as undisclosed income for AY 2016- 17 and 11.50 Crores for the AY 2017-18 in his sworn statement. The assessee offered Rs 3.30 Crore for the AY 2016-17 under PMGKY Scheme. The admission of part of the entries in the seized material by the assessee gives validation to the entries in the seized material and the Ld.CIT(A) failed to appreciate this.

2.3 The Ld.CIT(A) failed to appreciate that the Hon'ble Madras High court in the case of Thiru A.J. Rajesh kumar Vs Dy.CIT(2022) 441 ITR 495 observed that a statement made voluntarily by the assessee could form the basis of assessment and if the deponent is of the view that according to him, such statement recorded on oath, is not correct he should demonstrate with sufficient credible corroborative and cogent, convincing material evidence at the earliest point of time in terms of retraction, such retraction should not be a mere assertion..

2.4 The CIT(A) failed to appreciate that the assessee retracted his statement given u/s.132(4) during assessment proceedings but his retraction is not based on any credible evidence, thus he failed to discharge his onus to substantiate the alternate explanation furnished with reference to contents of seized documents after search proceedings.

2.5 The Ld.CIT(A) erred in relying on the decision of Apex Court in the case of Common cause Vs UOI which has been rendered in the context of criminal proceedings which require much high standard of burden of proof as compared to the Income tax proceedings (Civil) which require only preponderance of probability.

2.6 The Ld.CIT(A) erred in observing that the seized material used against the assessee did not contain complete information to facilitate drawing of Inference against the assessee, without appreciating that the assessee himself admitted the receipt of on money relating to property transaction for the AYs 2016-17 & 2017-18 in the sworn statement but offered the said income pertaining to the undisclosed income agreed for the AY 2016-17 alone under PMGKY Scheme.

2.7 The Ld.CIT(A) erred in observing that the material relied upon by the AO is a dumb document and the assessee did not acknowledge the receipt of any such payment by appending his signature /initial against the entries. The Ld.CIT(A) ought to have appreciated that maintaining clear, unambiguous and formal records of transaction of such nature would not be done for obvious reasons.

For these grounds and any other ground 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.

4. The assessee has raised the following legal grounds in Cross-Objection:

Following grounds of Cross-objection are without prejudice to each other and assessee's arguments in Department's appeal:

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not declaring the assessment order passed by the AO as bad in law and is null and void.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in not considering the submissions filed by the assessee that no incriminating material was found during the course of search for the captioned assessment year.

3. The assessment order was time barred and hence, is void ab initio.

The cross-objector craves leave to add to, amend, alter or delete the foregoing grounds of cross-objection.

5. Brief facts of the case are that, initially a search u/s 132 of the Act was conducted upon one SRS Mining Group on 08.12.2016 and in the course of search, a diary was found from the possession of one key person, Mr. Sekar Reddy, wherein certain pencil scribblings were found in note book ID marked ANN/KGAR/MPKSSR/B&D/S-2 relating to payments of Rs.11.50 crores made during FY 2016-17. In the post search enquiries,

it was gathered that each of the three (3) partners of the SRS Mining Group had booked an apartment in project 'One Crest', Chennai, which was being developed by M/s Kara Property Ventures LLP for which they had made payments aggregating to Rs.11.50 crores. Accordingly, a consequential search action was conducted upon the assessee who was one of the authorized signatories of M/s Kara Property Ventures LLP and his statement was also recorded u/s 132(4) of the Act. It is noted that, the assessee in his Answer to Q No. 17 had admitted to have received Rs.14.80 crores from Shri Sekar Reddy on behalf of the LLP by way of on-monies towards the apartments booked by the three (3) partners, out of which Rs.3.30 crores was received in earlier FY 2015-16 and Rs.11.50 crores was received in relevant FY 2016-17, which he is noted to have offered to tax by way of additional income.

6. Subsequently, the assessee is noted to have filed his return of income declaring total income of Rs.68,96,750/- on 23.11.2018 wherein he didn't offer any additional income. The AO is accordingly noted to have confronted the assessee, as to why, the disclosure offered in his statement recorded u/s 132(4) of the Act was not admitted in the return of income. The assessee vide his letter dated 28.11.2018 is noted to have informed the AO that he had retracted from his statement because it was obtained under duress. The AO, thereafter, is noted to have personally examined the assessee after summoning him u/s 131 of the Act on

26.12.2018 and his sworn statement was recorded. The AO is noted to have observed that, the assessee has affirmed in his statement that he had not received any monies from M/s SRS Mining and its partners and also showed that he was not the authorized signatory of the M/s Kara Property Ventures LLP to receive monies on behalf of the firm. The AO, thereafter, is noted to have made enquiry u/s 133(6) from M/s Kara Property Ventures LLP and the said LLP is noted to have informed the AO that the apartments booked by the partners of M/s SRS Mining had been cancelled and that the payments received from them had been refunded. It was also submitted that, the LLP had not received any monies apart from the monies received through banking channel.

7. In light of the above, the AO is noted to have observed that, the assessee's retraction was an after-thought and that when it was recorded initially (his original statement), it was given without any influence, but later in collusion with partners of M/s SRS Mining, he had retracted the statement without any valid reason. The AO, therefore, on the basis of the original statement of the assessee and the material seized from the premises of M/s SRS Mining held that the assessee was in receipt of monies of Rs.11.50 crores which he added u/s 69A of the Act. On appeal, the Ld. CIT(A) was pleased to delete the said addition. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us. The assessee is noted to have filed cross objections supporting the action of

the Ld.CIT(A) on certain legal grounds, which have already been noted supra.

8. Assailing the action of Ld. CIT(A), the Ld. DR has argued that, since seized material ANN/KGAR/MPKSSR/B&D/S-2 revealed that Rs.11.50 Crs. has been paid to the assessee by the partners of M/s.SRS Mining for booking flats in project "one Crest", a real estate project of M/s Kara Property Ventures LLP of which assessee was the authorized signatory, the veracity of the said seized material could not be doubted. He further contended that, the contents of the seized material stood corroborated by the assessee's statement recorded u/s.132(4) of the Act wherein had admitted receiving Rs.14.80 crores. He also brought to our notice that, the assessee had paid taxes on Rs.3.30 crores under the PMGKY Scheme and that the remaining sum of Rs.11.50 crores, although admitted to have been received, was wrongly retracted and not offered in the return of income. Supporting the order of AO, he thus contended that, the AO had rightly added the impugned sum in the hands of the assessee.

9. Per contra, the Ld. AR for the assessee submitted that, there was no incriminating material found in the course of search conducted on 21.12.2016 at assessee's premises which would suggest that the assessee had received such huge sum of Rs.11.50 crores. He brought to our notice that, the assessee was continuously interrogated for 40 hours

and at the fag-end, he was questioned regarding the contents of scribblings found in loose papers seized at the premises of M/s SRS Mining, which was not even actually shown to him and, the assessee not being in the correct frame of mind, accepted whatever the Investigation Officer wanted him to admit, to relieve himself from the ordeal. He showed us that, this fact was evident from the question no. 17 and assessee's answer wherein the assessee was confronted with noting of Rs.2 crore in relation to FY 2015-16 and that his admission in his answer was Rs.3.3 crores, which had no basis whatsoever. It was brought to our notice that, later on, within twelve days, the assessee had retracted from his statement by filing an affidavit. He submitted that, the assessee had stood by his retraction in the original assessment proceedings, and also during cross examination by the AO on 26.12.2018. He thus contended that the original statement having been validly retracted was not a reliable piece of evidence to make the impugned addition.

10. The Ld. AR further showed us that, the noting's found in a loose paper seized from M/s SRS Mining was stray noting's made in pencil. It was contended that, there was no acknowledgment, signature etc. of the assessee on that page, which would suggest that the assessee had actually received the monies. According to him, therefore stray noting's of figures by the third party, without any noting in handwriting of the assessee or his signature etc., cannot be straightaway inferred that

monies had exchanged hands. He further argued that, it was an admitted fact that the project was being developed by M/s Kara Property Ventures LLP and that the apartments were to be sold by them and therefore on-monies, if any, could be inferred only in the hands of LLP and not the assessee. The Ld. AR contended that, it is well settled in law that right income is to be brought to tax, in the hands of right person, and that when the Revenue was aware that the appellant had not sold these flats, the on-monies could not have been legally added in his hands. He further contended that, in spite of these facts being known to the Revenue, the Revenue didn't bother to make any enquiries from M/s Kara Property Ventures LLP for almost two years and that enquiry was made only at the fag end of assessment, from which it came to light that the sale of apartments never actually fructified but was rescinded. According to Ld. AR therefore, when the flats were not sold, the question of bringing to tax on-monies didn't arise. He thus urged that the Ld. CIT(A) had rightly deleted the impugned addition.

11. On the assessee's declaration under PMGKY Scheme, the Ld. AR showed that, the declaration was not made with reference to the impugned issue and therefore the Ld. DR's contention that the said declaration related to receipt of purported on-monies in question was factually erroneous. The Ld. AR particularly invited our attention to several decisions rendered by this Tribunal, placed at Pages 185 to 235 of

Paper Book, in the context of noting's found in loose papers during the search in the matters ofM/s. SRS Mining Group which were deleted by this Tribunal holding these noting's to be dumb in nature. He accordingly urged that the order of Ld. CIT(A) did not warrant any interference.

12. Heard both the parties. The issue in dispute relates to addition of receipt of on-monies of Rs.11.50 crores in relation to sale of apartment at a project 'One Crest Chennai'. The undisputed facts of the case are that, a real estate project, 'One Crest' was being developed by M/s Kara Property Ventures LLP. It is noted that three (3) partners of M/s SRS Mining had booked apartments with the said Developer for which payments were *inter alia* made through banking channel to M/s Kara Property Ventures LLP. Accordingly, the undisputed fact is that, the apartment in question was being sold by M/s Kara Property Ventures LLP. It is noted that, certain scribblings in pencil were found in a dairy maintained by one of the partners, Mr. Sekar Reddy, regarding payment of Rs.11.50 crores during the relevant year, which according to the Investigating authorities related to payment of on-monies for the apartment in question. It is observed that, upon enquiry made from M/s Kara Property Ventures LLP u/s 133(6) of the Act, the said LLP is noted to have acknowledged that these three (3) partners had booked flat with them, but the said booking was cancelled and the monies had been refunded. Accordingly, no sale of apartments ever fructified. This fact, we note, has not been disputed by

the AO as well. Having regard to these contemporaneous facts, we find that the Ld. CIT(A) had rightly held that, the presumption of payment of on-monies lacked foundation for the reason that, no such apartment was ultimately sold and therefore one cannot infer taxation of on-monies on a phantom transaction. We thus concur with the following findings of Ld. CIT(A) on this score itself: -

> "6.7 … In the statement recorded from the partners of M/s SRS Mining, it is evident that even though the partners have admitted about the payment of advance for purchase of flats at One Crest, the transaction was not completed and the advance amount was returned. Neither the Authorised Officer nor the AO has brought on record whether the property in consideration was actually purchased by them. However the AO in the assessment order has treated the sum of Rs.11.50 crores as on-money paid to the appellant and brought to tax as the undisclosed income of the appellant u/s 69A of the Act. It is significant to bring on record that when the ultimate purchase of the property was not materialized, the presumption of the AO that on-money paid upon such 'phantom transaction' lacks foundation of making the addition.

13. It is also noted that, the apartments in question were being developed by M/s Kara Property Ventures LLP and that the original booking of flats were also between these three (3) partners and M/s Kara Property Ventures LLP. It is also a contemporaneous fact that the initial payment was also received by M/s Kara Property Ventures LLP through banking channel. On these facts, we find merit in the Ld. AR's argument that, legally, any addition on account of purported on-monies could have only been inferred in the hands of M/s Kara Property Ventures LLP and not the assessee, who was only one of the erstwhile authorized signatories in the said LLP. It is noted that, the assessee also, in his

original statement (although retracted later on), if taken at its face value, had stated that the monies were received on behalf of M/s Kara Property Ventures LLP. Accordingly, we are in agreement with the assessee that the addition made on account of the on-monies in the hands of the assessee was unjustified. For this, we gainfully refer to the following observations made by the Hon'ble Supreme Court in the case of **ITO Vs Ch. Atchiah (218 ITR 239)** wherein it was held as under:-

> "Under the 1961 Act, the Assessing Officer has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By 'right person' is meant the person who is liable to be taxed, according to law, with respect to a particular income."

14. We also gainfully refer to the decision of this Tribunal at Hyderabad in the case of **JCIT Vs Narayana Reddy Vakati (128 taxmann.com 377)**. In the decided case also, search was conducted u/s 132 of the Act and several incriminating documents were found which revealed bogus purchases & unexplained expenditure of a company, M/s VNRIL. The assessee who was the Managing Director of the said company and had admitted to the aforesaid undisclosed payments. Relying on his statement, the AO added the same in hands of the assessee. On appeal the Ld. CIT(A) deleted the addition *inter alia* on the ground that, it was brought to tax in hands of 'wrong person' i.e. the assessee, and ought to have been taxed in the hands of 'right person' i.e. M/s VNRIL. Upholding

the order of the Ld. CIT(A), this Tribunal is noted to have observed as follows:-

> "5. The Revenue vehemently contended during the course of hearing that the CIT(A) ought to have affirmed both the impugned additions in the assessee's hands as per the Assessing Officer's stand. We make it clear that there is not even an indication in the Revenue's grounds that the impugned additions pertain to the assessee himself than his company M/s. VNR Infrastructure Limited. Hon'ble apex court's landmark decision in ITO v. C H Atchaiah [1996] 84 Taxman 630/218 ITR 239 (SC) held long back that the Assessing Officer can and he must, tax the right person and the right person alone. By 'right person' it is meant the person who is liable to be taxed according to law with respect to a particular income. By the connotation of 'right person', it is meant the person who is liable to be taxed, according to law, with respect to a particular income. And that the expression 'wrong person' is obviously used as an antithesis of the expression 'right person' only. We observe that this assessee is the 'Managing Director' of M/s. VNR Infrastructure Limited. And that it is this latter entity which the fact is engaged in all the business activity(ies) and has been assessed separately throughout. There is yet another landmark decision Saloman v. Saloman and Co. Ltd. [1897] AC 22 hold long back in corporate parlance that a company is very a body corporate and a distinct entity apart from its Director.
>
> 6. We conclude in these circumstances that the CIT(A) has rightly deleted these twin additions in the assessee/individual's hands since corresponding undisclosed and unaccounted income pertains to its company M/s. VNR Infrastructure Limited carrying out the business in its own name. We make it clear while holding so that the Revenue has not even indicated the fact above the company's assessment qua the very income(s). We thus see no reason to reverse the CIT(A) detailed findings for these precise reasons."

15. For the above reasons therefore, we accordingly hold that, the impugned addition made in the hands of the assessee was legally unsustainable.

16. Now we come to Revenue's reliance on the scribblings found on a loose paper in third party premises and the statement of the assessee recorded u/s 132(4) of the Act affirming the noting's on the said loose sheet to be pertaining to him. 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 [1998] 3 SCC 410** and **Common Cause (A Registered Society) Vs Union of India (394 ITR 220)**. Having regard to this position of law, we now advert to the noting's found in the material seized from the premises of M/s SRS Mining. It is observed that, the assessee had explained before the AO that, he was only shown a diary found from the premises of one Mr. Sekar Reddy wherein there were certain pencil entries noting his name against certain cash payments, but there was no acknowledgment on that sheet against the amounts by the assessee. According to him therefore, such stray notings could not be treated as corroborative

evidence to infer undisclosed income in the hands of the assessee. The AO is noted to have acknowledged this objection of the assessee, but had not specifically controverted the same but rejected it as an after-thought. We find that, the Ld. CIT(A) had examined the said noting's and rightly found the same to be dumb in nature, by holding as under:-

> "6.8 The next issue arising out of the addition is that the evidence relied upon by the AO seized from the third party premise lacks evidentiary value. The Appellant in the submission before the AO has made a submission in this regard, the relevant portion of the submission as brought out by the AO in the assessment order is reproduced as under :-
>
> > *"I remember that the documents with reference to which the question No. 17 was put to me was a diary found at the business premises of Shri. Sekar Reddy. It would appear that there were certain pencil entries noting cash payment against my name. There is no indication in the said document to show that I had acknowledged the receipt of those amount."*
>
> 6.9It may be observed that the AO has not made any adverse finding against the above submission of the Appellant, It is only the pencil entries in the seized notebook wherein certain cash payments have been noted against the Appellant. Further in the seized material relied upon by the AO, there exists no indication that the-Appellant had acknowledged the receipt of this amount. Further in the same submission, the Appellant had claimed the following :-
>
> > *" It is on record that my residential house was searched over a period of forty hours by the search team. In the course of such a marathon search at my residence, absolutely no incriminating materials were found indicating that I had received the amount of Rs. 11.50 Crores."*
>
> 6.10 The AO in the assessment order has not made any findings upon the above submission. The AO in the assessment order has treated the statement recorded u/s 132(4) of the Act as a sacrosanct and conclusively arrived at a conclusion that the Appellant has received an amount of Rs. 11.50 Crores from the partners of M/s. SRS Mining for the purchase of Flat from the project "One Crest" at Nungambakkam, Chennai.
>
> 6.11 In the instant case at hand the aforesaid seized material as relied upon by AO was seized from the premises of a third-party during the course of search conducted in the case of the said third-party (M/s SRS Mining) The said material was neither seized from the premises ofthe Appellant nor was the same found to be in the handwriting of the Appellant and therefore the same would not constitute adequate evidence to draw any adverse inference against the Appellant, in the absence of any other corroborative evidence. The proposition

laid down by Hon'ble Delhi High Court in the case of CITvs. Sant Lal (118,Taxmann.com 432) is that when a diary is seized in search of the premises ofa thirdparty allegedly 23 containing entries ofhundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries sincethe diary was neither found from the premises of assessee nor was it in handwriting of assessee and revenue tallied toproduce any other cogent material to link the assessee to the diary. The ratio of the said decision is squarely applicable to the case of the Appellant since the AO had not referred to any cogent material to corroborate the entries made in the material seized from a third-party, which were purportedly the transactions made by the said third-party with the Appellant.

6.12At this juncture, it is pertinent to rely upon the decision of Jabalpur Bench of Tribunal in the case of ACIT vs Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-0] and the decision rendered by the Hon'ble Mumbai Tribunal in the case of Riveria Properties Pvt. Ltd. Vs ITO (ITA No,250/Mum/2013) where in it was held that the AO was required to bring further evidence on record to show that the money was actually exchanged between the pailies in case where there was no other evidence on record to prove that on-money was paid except the loose sheets found in the premise of third-party and admission made by the third-party. Also, the Hon’ble Supreme Court in the case of Common Cause vs. UOl held as under:-

We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of account but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. The aforesaid decision of Hon’ble Supreme Court stresses the need for exercising caution and for bringing on record relevant, reliable and cogent evidence to corroborate the entries found in loose and notebooks regarding the payments allegedly made to important constitutional functionaries so that the process of law is not abused by unscrupulous persons in order to achieve ulterior goals. Therefore, it is important that the corroborative evidence should be available on record in support of the entries made in the seized material found in the premises of third-party.

6.13 It is brought on record that the said seized material as used against the Appellant did not contain complete information to facilitate drawing of such an inference. There was 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 the recipient. In the absence of such essential and critical information, it could not be Inferred that the payments were made to the Appellant and that the said amounts represent the income of the Appellant. It could also not be inferred with a reasonable degree of certainty that the payments were made to Appellant. An entry made in a diary or notebook by a third person with scant details cannot be used to fasten tax liability on the Appellant, in the absence of any corroborative evidence to attribute the entries to Appellant. Such seized materials liable to be treated as as 'dumb document', which would 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. Another fact was that the Appellant did not acknowledge receipt of any such payment by way of appending his signature / initial against the said payments. If a third party unilaterally makes entries in a diary/note book showing payments to a person to suit his convenience, the payments could not be inferred to have been made to the said person unless there is corroborative evidence to establish the actual making of payments to the said person. There was no reference to such corroborative evidence in the assessment order.

6.14 When the assessee denied having any transaction with the group, he cannot be expected to discharge a reverse burden as per the legal principles laid down by Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO (131 TR 597) holding that the onus of establishing that the conditions of taxability are fulfilled would be on revenue and throwing this burden on the assessee would be to cast an almost impossible burden upon him to establish the negative. Therefore, the AO was not correct in stating that the assessee failed to furnish any evidence to that he did not have any financial transactions with M/s SRS Mining. The burden was on revenue to establish that the assessee/was in receipt of payments as noted in the seized material. The AO in the present case has not discharged his burden in proving that the Appellant was actually in receipt of the amount of Rs. 11.50Crores. Further, as per settled legal precedents, no addition could be made unless there is corroborative evidence to validate the entries foundin the material seized from a third-party."

17. 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 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 reliable evidence against the assessee.

18. We also gainfully refer to the decision of coordinate bench of this Tribunal, Ahmedabad in the case of **Jawaharbhai Atmaram Hathiwala v. ITO (128 TTJ 36)**. In this case, addition was made by relying on seized material and statement of third party without bringing any other evidence on record. The Tribunal deleted the addition. The relevant portion of the order of Tribunal is as under :-

> "Held that no evidence could be brought on record by the Revenue to show that in fact the assessee had paid 'on money' to the developers. No document containing signature of the assessee or handwriting of the assessee to corroborate the above making of payment by the assessee was found during the course of the search. Merely recording made by a third party or statement of a

> third party could not be treated as so sacrosanct so as to read as a positive material against the assessee. Therefore, addition in the hands of the assessee on account of 'on-money' was not justified"

19. According to us therefore, the stray noting's found in 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. As noted above, these notings were inferred to relate to on-money payments for purchase of flats. It is not in dispute that, the sale of flats did not fructify and therefore, inference of receipt of on-monies was not tenable. Further, the statement of the assessee recorded u/s 132(4) of the Act, which has been heavily relied upon by the Ld. DR, is found to have been retracted by him. The Ld. AR has rightly shown that the question put to the assessee and his answer does not appear to inspire confidence that the statement was taken without any influence or pressure. No prudent person would admit to income of Rs.3.3 crores, when shown document/noting of Rs. 2 crores. Further, we also note that, the assessee had stood by his retraction and also withstood cross-examination by the AO when summoned u/s 131 of the Act on 26.12.2018. We therefore also note that, the original statement of the assessee, having been validly retracted, is not reliable evidence, in the present matter. It is also noted that, there was no

incriminating material found from the premises of the assessee which would in any manner corroborate the inference drawn by the AO on the basis of noting's found in the third party premises. Overall, therefore, we are in agreement with the Ld. CIT(A) that the stray noting's found in the material seized from premises of M/s SRS Mining was in the nature of 'dumb document' and that the AO was unable to discharge his onus of proving that the assessee had indeed received Rs.11.50 crores by way of undisclosed monies.

20. As far as the Revenue's reliance on assessee's declaration under PMGKY Scheme, we find the same to be of no relevance as there is no iota of evidence to show that the declaration made by the assessee was in relation to the impugned issue.

21. We, instead, find the reliance placed by the assessee on the decision in the case of **DCIT Vs O Pannerselvam in ITA Nos. 581 & 582/Chny/2023 dated 05.04.2024** to be squarely applicable to the facts of the present case. In the decided case also, the AO had made additions based on noting's found in papers seized from the premises of M/s SRS Mining, which was deleted by Ld. CIT(A) and the aforesaid appellate order was upheld by this Tribunal, by holding as under:-

> "14. So far as the merits of quantum addition is concerned, the findings of Ld. CIT(A) have been enumerated by us in detail in preceding paragraphs. The Ld. CIT(A), upon perusal of the relevant entries in the seized material, concurred that the name of the assessee did not appear in any of the entries so considered

by Ld. AO to be pertaining to the assessee. All the entries so considered by AO merely contain an abbreviation viz. 'OPS Ramesh'. The Ld. AO relied on the statement of Shri K. Srinivasulu u/s 132(4) dated 10.12.2016 to conclude that the said name of 'OPS Ramesh', in the seized material, refers to the assessee. Shri K. Srinivasulu explained in his statement that the name 'OPS Ramesh' in the seized material was used to denote 'PA to OPS' and since the assessee was popularly referred to in the media / press and by the general public as 'OPS', Ld. AO drew inference that the payments noted in the seized material with the name 'OPS Ramesh' represent the payments made to the assessee. However, as rightly noted by Ld. CIT(A), there was no mention anywhere in the statement of Shri K. Srinivasulu that the assessee was the actual recipient of the payments shown against the said name of 'OPS Ramesh'. Shri K.Srinivasulu did not state anywhere in his statement that the acronym 'OPS' was used in the seized material to denote the assessee. Further, the seized material did not contain any evidence to draw the inference that the payments noted with the name 'OPS Ramesh' actually represented amounts received by the assessee. Therefore, it was to be held that the conclusion of Ld. AO was on mere presumption that the abbreviation 'OPS' found in the seized material refers to the assessee and this presumption was based on the short name popularly used in the press and media to refer to the assessee. However, drawing such a presumption without having any independent corroborative evidence that the acronym 'OPS' used in the seized material refers only to the assessee and not to any other person whose name may have the same acronym, could not be sustained. In the absence of any other corroborative evidence supporting the inference drawn by AO, it could be said that the conclusion of Ld. AO was mere conjecture which could not be accepted to fasten huge tax liability on the assessee on account of such inference.

15. Proceeding further, it could also be seen that the impugned additions have been made in the hands of the assessee merely on the basis of vague entries found in the material seized from a third-party premise. The said material was seized from the premises of a third-party during the course of search conducted in the case of the said third-party. The said material was neither seized from the premises of the assessee nor was the same found to be in the handwriting of the assessee. Therefore, such material, unless backed by corroborative evidence, would not constitute adequate evidence to draw any adverse inference against the assessee as held by Hon'ble Delhi High Court in the case of CIT vs. Sant Lal [2020] 118 Taxmann.com 432 (Del). The Hon'ble Court, in similar situation, held no addition could be made merely on the basis of such entries. The ratio of the said decision was squarely applicable to the case of the assessee as the Ld. AO has not referred to any cogent material to corroborate the entries made in the material seized from a third-party which are purportedly the transactions made by the said third-party with the assessee. The other decisions including the decision of Jabalpur Bench of Tribunal in the case of ACIT vs. Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-O] further supports this proposition. Similarly, Mumbai Tribunal in the case of Riveria Properties Pvt. Ltd. Vs ITO (ITA No.250/Mum/2013) held that AO was required to bring further evidence on record to show that the money was actually exchanged between the parties in case where there was no other evidence on record to prove that on-money was paid except the loose sheets found in the premise of third-party and admission made by the third-party. Also, Hon'ble Supreme Court in the case of Common

Cause vs. UOI (supra) stressed the need for exercising caution and for bringing on record relevant, reliable and cogent evidence to corroborate the entries found in loose sheets and note books regarding the payments allegedly made to important constitutional functionaries so that the process of law is not abused by unscrupulous persons in order to achieve ulterior goals. Therefore, it was important that the corroborative evidence was available on record in support of the entries in the seized material found in the premises of third-party. Considering all these facts as well as the ratio of these judicial precedents, we concur with the findings of Ld. CIT(A) that the seized material did not contain complete information to facilitate drawing of such an adverse inference against the assessee. The information was a vague information. In such a situation, it could not be inferred with a reasonable degree of certainty that the payments were made to a person whose name (or code name) appears therein and that the said amounts represent the income of the said person. As rightly held by Ld. CIT(A), an entry made in a diary or notebook by a third person with scant details could not be used to fasten tax liability on the person whose name appears therein, in the absence of corroborative evidence. If a third-party unilaterally makes entries in a diary / note book showing payments to a person to suit his convenience, the payments could not be inferred to have been made to the said person unless there is corroborative evidence to establish the actual making of payments to the said person.

16. So far as the statement of Shri K. Srinivasulu is concerned, as rightly held by Ld. CIT(A), the same would not serve as corroborative evidence in respect of entries in the seized material. That person gave a general statement that the entries represent incidental expenses paid to various persons. When there were numerous pages and entries in the seized material, such a general statement would not inspire confidence for drawing any conclusion in respect of specific entries appearing therein allegedly with the abbreviated name of the assessee to conclude that the entries represent payment made to the assessee only. There was nothing in the statement even to remotely suggest that the entries appearing with the abbreviated name actually represent payment made to the assessee. The statement merely stated that the entries were maintained on the instructions of the partners of M/s SRS mining. It was very clear that Shri K. Srinivasulu had no first-hand knowledge of the payments noted in the seized material and had merely noted whatever was told to him by the partners. In such a situation, the statement would serve a very limited purpose of ascertaining the identity of the person who made the entries and nothing more. Since the entries were made on the instructions of the partners, it is the partners who were required to explain the exact identity of the recipients, the nature of payments, the purpose of payments and the identity of the person who made the payments etc. However, there is no material on record which would show that any of the partners was examined with regard to relevant entries in the seized material. There was no reference to any such statement of the partners in the assessment order. Therefore, the statement of Shri K. Srinivasulu could barely be considered as corroborative evidence against the assessee with regard to the entries in the seized material. This was further fortified by the fact that the said statement was retracted vide letters dated 21-03-2017 and 23-03-2017 addressed to DDIT (Inv.) which was submitted by Shri K. Srinivasulu through the Jail Superintendent when he was lodged in the Jail. In the retraction letters, it was claimed that the earlier statement was given under

coercion and duress and in a state of mental shock, depression and physical exhaustion at the relevant point of time due to continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or to take rest. He further stated that he was not allowed to read the typed statement and his signature was obtained by force. He stated that he never paid any money to various persons as recorded in the typed assessment. He also stated that he signed the statement to end the prolonged ordeal of intimidation, harassment and mental torture. Shri K. Srinivasulu reiterated his retraction in the course of statement u/s 131 as recorded by Ld. AO on 30-03-2021 during the course of assessment proceedings. This being the case, it could be said that the retraction was rejected by Ld. AO without any valid reasons.

17. It could further be noted that similar additions were made by revenue in the case of another similarly placed assessee by the name Shri P. Ramamohan Rao. That assessee sought cross-examination of Shri K. Srinivasulu during the course of assessment proceedings. However, Shri K. Srinivasulu became non-cooperative and hostile during the course of preliminary examination of the said person before Ld. AO on 19.12.2018. Since the witness turned hostile, it was concluded that cross-examination would not serve any useful purpose. That assessee preferred Writ Petition before Hon'ble High Court of Madras praying for issue of directions to the AO to permit the assessee to cross-examine the witness being relied upon by Ld. AO. The writ petition was dismissed vide order dated 27.12.2018. The Hon'ble Court held that there was no infirmity in the order of AO in refusing the request for cross-examination since the witness turned hostile. The Hon'ble Court further observed that if AO was to rely on the statement of Shri K. Srinivasulu which is in favor of the revenue, the AO has to let in other reliable evidence to corroborate the same. Similarly, the Hon'ble Court in the case of M/s SRS mining Vs UOI (141 Taxmann.com 272), at para 9, observed that the statement of Shri K Srinivasulu could not be relied upon as he turned hostile by giving specific retraction statement and there was no need to accord permission to cross-examine him in view of the said reason. Considering these observations, it was to be held that the statement of Shri K. Srinivasulu could not be used against the assessee unless some other evidence to corroborate the same was made available on record. In the present case, Ld. AO did not rely on any other corroborative evidences except for relying on the statement of Shri K. Srinivasulu since in the sworn statements of three other partners recorded on 08-12-2016, no questions were posed to them at all regarding the seized material allegedly containing the details of incidental charges paid to various persons. It was thus evident that no other corroborative evidence was available in record in respect of notings in the seized material. Therefore, the impugned addition could not be sustained merely relying on this statement. The conclusions of Ld. CIT(A), in this regard, find our concurrence.

18. Further, the assessee could not be expected to discharge a reverse burden as per legal principles laid down by Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO (131 ITR 597) holding that onus of establishing that the conditions of taxability are fulfilled would be on revenue and throwing this burden on the assessee would be to cast an almost impossible burden upon him to establish the negative. Therefore, it was onus of Ld.AO to establish that the assessee was in receipt of payments as noted in the seized material. This burden was not discharged by revenue in the present case. Further, as per settled legal

precedents, no addition could be made unless there is corroborative evidence to validate the entries found in the material seized from a third party. The Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla (AIR SC 410) held that every transaction as recorded in the regular books needs to be independently corroborated and proved when some liability is to be fastened in respect of such transactions. The legal principle as laid down by Hon'ble Supreme Court is that independent corroborative evidence is required in respect of entries in regular books of accounts and the same would apply in the present case. The decision of Bangalore Tribunal in the case of ACIT vs. Sri B.S.Yediyurappa (ITA No.14/Bang/2019 dated 07.04.2022) is on similar fact. The bench held that the addition made in the hands of the said person who was the Chief Minister of the State of Karnataka during the relevant period, based on the entries of cash payments found recorded with the initials "BSY'' in the material seized during the course of search conducted in the case of a third party, would not sustainable in the absence of any evidence to corroborate the notings in the seized material. The said decision, in our opinion, is squarely applicable to the facts of the present case and favors the case of the assessee.

19. Considering all these facts, the apt conclusion would be that the seized material was in the nature of dumb document which did not contain complete and unambiguous information to arrive at such a conclusion that the assessee was in receipt of the payments found noted therein against the name 'OPS Ramesh'. There was no corroborative evidence to support and supplement the details in the seized material to conclusively establish that the name 'OPS Ramesh' found in the seized material refers to the assessee only. There was no corroborative evidence to prove that the payments noted in the seized material have actually materialized and transfer of money has actually taken place between the concerned parties. In view of all these reasons, the addition of alleged receipts by the assessee from M/s SRS Mining has rightly been deleted by Ld. CIT(A). We endorse the view of Ld. CIT(A), in this regard."

22. In view of our above discussions, specific facts of this case, we are of the considered view that, the Ld. CIT(A) had rightly held that the seized material was in the nature of dumb document which did not contain complete and unambiguous information to arrive at such a conclusion that the assessee was in receipt of on-monies and thatthere was no corroborative evidence to support and supplement the stray notings, particularly when the purported transaction concerning these notings never materialized. Also, as held above, the assessee had also validly retracted his original statement and therefore the AO's reliance

thereupon to justify the impugned addition is found to be unjustified. In view of all these reasons, we see no reason to interfere with the order of Ld. CIT(A). Accordingly, all the grounds raised by the Revenue stands dismissed.

23. In view of our above findings, the legal grounds raised by the assessee in the cross objections have become academic and is therefore infructuous, but left open.

24. In the result, both the appeal of the Revenue and cross objections of the assessee are dismissed.

Order pronounced on the 28th day of February, 2025, in Chennai.

Sd/-	**Sd/-**
(अमिताभशुक्ला)	**(एबीटी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखासदस्य**/ACCOUNTANT MEMBER**	न्यायिकसदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 28th February, 2025.
TLN, Sr.PS

आदेशकीप्रतिलिपिअग्रेषित**/Copy to:**

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