**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**

**IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI**

**श्री मनु कुमार गिरि ,न्यायिक सदस्य एवं श्री जगदीश , लेखासदस्य के समक्ष**

**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकरअपीलसं./I.**T.A.Nos.1274, 1275 and 1283/Chny/2023**

(निर्धारण वर्ष / Assessment Years: 2015-16, 2016-17, 2017-18)

| | | |
|---|---|---|
| **Deputy Commissioner of Income Tax,**<br>Central Circle-2(4),<br>Chennai. | Vs | **Shri K.Rethinam,**<br># 1/1, GTN Salai,<br>Opp.SMBM School,<br>Dindigul -624 001. |
| | | PAN :ARWPR-3777-N |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

**&**

आयकरअपीलसं./I.**T.A.Nos.1276, 1277 and 1278/Chny/2023**

(निर्धारण वर्ष / Assessment Years: 2015-16, 2016-17, 2017-18)

| | | |
|---|---|---|
| **Deputy Commissioner of Income Tax,**<br>Central Circle-2(4),<br>Chennai. | Vs | **Shri S.Ramachandran,**<br># 3/29, New No,3/40,<br>Muthupattinam,<br>S.Kulavaipettai Post,<br>Alangudi Tk-622 001. |
| | | PAN :ADFPR-3158-Q |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

**&**

आयकरअपीलसं./I.**T.A.Nos.1279, 1280 and 1281/Chny/2023**

(निर्धारण वर्ष / Assessment Years: 2015-16, 2016-17, 2017-18)

| | | |
|---|---|---|
| **Deputy Commissioner of Income Tax,**<br>Central Circle-2(4),<br>Chennai. | Vs | **Shri Jagannathan Sekar**<br># 25, Sambasivam Street,<br>T.Nagar Chennai-600 017. |
| | | PAN :BCDPS-4688-G |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

| | | |
|---|---|---|
| अपीलार्थीकीओरसे/ Revenue by | : | Mr. V.Justin,CIT |
| प्रत्यर्थीकीओरसे/ Assessee(s) by | : | Mr. Y.Sridhar, F.C.A. &<br>Ms.Varsha Sridhar, C.A |

| | | |
|---|---|---|
| सुनवाईकीतारीख/Date of hearing | : | 25.02.2025 |
| घोषणाकीतारीख /Date of Pronouncement | : | 30.04.2025 |

**आदेश / O R D E R**

**PER BENCH:**

The captioned nine appeals by the revenue are filed against the separate orders of the Commissioner of Income Tax (Appeals)-19, Chennai dated 15.09.2023 for the assessment year 2015-16, 2016-17 and 2017-18.

2. The revenue has filed the following grounds of appeal in 1274, 1275 and 1283/Chny/2023 against the impugned orders for the A.Ys. 2015-16, 2016-17 and 2017-18:

ASSESSMENT YEAR : 2015-16:

*"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 directing the assessing officer to delete the addition of Rs. 28,33,33,333/- towards unaccounted receipt of partner's remuneration quantified on the basis of materials seized during the course of search.*
*2.1 The Ld. CIT(A) failed to appreciate that the remuneration was received in cash by the assessee from the firm as evidenced by the materials seized in the office of the firm, which is required to be assessed in the hands of the assessee.*
*2.2 The Ld.CIT(A) held that the partner's remuneration to the extent which has not been allowed as deduction in the hands of firm as per the provisions of 40(b) of the Act is not liable to be included in the total income of the partners.*
*The assessment in the case of SRS Mining has been set aside by the Hon'ble High court with certain directions and the SLP filed by the assessee challenging the order of High Court is pending before the Supreme Court as on date. Since the assessment in the case of firm has not attained finality, the remuneration received in cash is assessable in the hands of partners.*
*3.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."*

ASSESSMENT YEAR : 2016-17:

*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 directing the assessing officer to delete the addition of Rs. 6,66,66,667/- made towards unaccounted receipt of partner's remuneration quantified on the basis of materials seized during the course of search.*

*2.1 The Ld.CIT(A) failed to appreciate that the remuneration was received in cash by the assessee from the firm as evidenced by the materials seized in the office of the firm, which is required to be assessed in the hands of the assessee.*

*2.2 The Ld.CIT(A) held that the partner's remuneration to the extent which has not been allowed as deduction in the hands of firm as per the provisions of 40(b) of the Act is not liable to be included in the total income of the partners.*

*The assessment in the case of SRS Mining has been set aside by the Hon'ble High court with certain directions and the SLP filed by the assessee challenging the order of High Court is pending before the Supreme Court as on date. Since l the assessment in the case of firm has not attained finality, the remuneration received in cash is assessable in the hands of partners.*

*The Ld.CIT(A) erred in directing to delete the addition of Rs.1,10,00,000/- made towards cash payments to Shri. Gopu Rajagopal for purchase of property from M/s. Kara Property Ventures LLP.*

*3.1 The Ld.CIT(A) erred in failing to appreciate that the addition was made on the basis of entries made in the materials seized during the course of search in the office premises of M/s.S.R.S.Mining, the firm in which the assessee is one of the partners. Shri.Gopu Rajagopal, in the sworn statement recorded u/s.132(4) admitted that the said payments in cash were received by him on behalf of M/s.Kara Property Ventures UP, as on money for property transactions which was outside the books of account.*

*3.2 The Ld.CIT(A) erred in placing reliance on the retraction filed by Shri.Gopu Rajagopal vide affidavit dated 03/01/2017, without appreciating that the retraction of statement was not backed by any evidence and only after thought by the influence from the parties involved in the transaction.*

*3.3 The Ld.CIT(A) ought to have appreciated that Shri.Gopu Raja Gopal admitted Rs.3,30,00,000/- under PMGKY Scheme 2016 vide Form:1 dated 15/02/2017. During the course of assessment proceeding in the case of Shri.Gopu Rajagopal, in response to query dated 28/11/2018, regarding the amount of Rs.3.3 Crores proposed for assessment, he submitted that the said amount is offered under PMGKY Scheme, Considering his reply, the AO has not made any*

*addition in the assessment order for AY 2016-17 in the hands of Shri. Gopu Rajagopal. In view of the above, the retraction made by Shri.Gopu Raja Gopal is proved to be invalid.*

*4. 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.*

*ASSESSMENT YEAR : 2017-18:*

*1.The order of the learned Commissioner of Income Tax (Appeals) ls erroneous on facts of the case and in law.*
*2 The Ld.CIT(A) erred in directing the assessing officer to delete the addition of Rs.16,50,00,000/- made towards unaccounted receipt of partner's remuneration quantified on the basis of materials seized during the course of*
*search.*
*2.1 The Ld.CIT(A} failed to appreciate that the remuneration was received in cash by the assessee from the firm as evidenced by the materials seized in the office of the firm, which is required to be assessed in the hands of the assessee.*
*2.2 The Ld.CIT(A) held that the partner's remuneration to the extent which has not been allowed as deduction in the hands of firm as per the provisions of 40(b) of the Act is not liable to be included in the total income of the partners.*
*The assessment in the case of SRS Minining has been set aside by the Hon'ble High court with certain directions and the SLP filed by the assessee challenging the order of High Court is pending before the Supreme Court as on date. Since the assessment in the case of firm has not attained finality, the remuneration received in cash is assessable in the hands of partners.*
*The Ld.CIT(A) erred in directing to delete the addition of Rs.3,83,33,330/- made towards cash payments to Shri.Gopu Rajagopal for purchase of property from M/s.Kara Property Ventures LLP.*
*3.1 The Ld.CIT(A) erred in failing to appreciate that the addition was made on the basis of entries made in the materials seized during the course of search in the office premises of M/s.S.R.S.Mining, the firm in which the assessee is one of the partners. Shri.Gopu Rajaqopal, in the sworn statement recorded u/s.132(4) ARWPR3777N AY 2017-18 M/s.Kara Property Ventures LLP, as on money for property transactions which*
*was outside the books of accounts.*
*3.2 The Ld.CIT(A) erred in placing reliance on the retraction filed by Shri.Gopu Rajagopal vide affidavit dated 03/01/2017, without appreciating that the retraction of statement was not backed by any evidence and only after thought by the influence from the parties involved in the transaction.*
*3.3 The Ld.CIT(A) ought to have appreciated that Shri.Gopu Raja Gopal admitted Rs.3,30,00,000/- under PMGKY Scheme 2016 vide Form:1 dated*

*15/02/2017. During the course of assessment proceeding in the case of Shri.Gopu Rajagopal, in response to query dated 28/11/2018, regarding the amount of Rs.3.3 Crores proposed for assessment, he submitted that the said amount is offered under PMGKY Scheme. Considering his reply, the AO has not made any addition in the assessment order for AY 2016-17 in the hands of Shri. Gopu Rajagopal. In view of the above, the retraction made by Shri.Gopu Raja Gopal is proved to be invalid.*
*4. 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."*

3. Both the parties informed this bench that there is no stay of these appeal proceedings by the any forum. Hence, with the consent of both the parties we proceed to hear and adjudicate these appeals. We are taking I.T.A.Nos.1274, 1275 and 283/Chny/2023 for Assessment Years 2015-16, 2016-17 and 2017-18 as lead case and the findings in these appeals will accordingly apply mutatis mutandis to I.T.A.Nos.1276, 1277 and 1278/Chny/2023 an I.T.A.Nos.1279, 1280 and 1281/Chny/2023. The facts and issues involved in these nine appeals are identical.

4. The brief facts of the case are that a search u/s 132 of the Act was conducted in the case of Shri. M.Premkumar, Shri. K.Srinivasulu, Shri. J.Sekar Reddy and M/s SRS Mining (hereinafter referred to as 'SRS Group') on 08.12.2016. During the course of the search, certain books of accounts, documents and loose sheets were found and seized from various office premises of M/s SRS Mining. The Appellant is a Partner in M/s.SRS Mining and his residential premises was also searched on 10.12.2016.As a result of search, the AO issued notices u/s 153A of the Act for AYs 2015-16 and

2016-17 on 31.08.2017. In response to the aforesaid notices, the Appellant filed returns of income for the relevant assessment years on 10.08.2018. Notices u/s 143(2) of the Act were issued by the AO for the said assessment years on 24.08.2018. In respect of AY 2017-18 the Appellant filed the return of income for AY 2017-18 on 31.03.2018 and the AO issued notice u/s 143(2) for the said assessment year on 05.09.2018. Based on the material seized during the search, the AO issued notices u/s 142(1)(ii) on 07.09.2018 for AYs 2015-16 to 2017-18. Further, the AO issued letters dated 03.05.2019 and 09.05.2019 and notice dated 03.06.2019 requesting the assessee to furnish reply to the notice u/s 142(1)(ii) issued earlier on 07.09.2018.The Authorized Representative of the assessee appeared in response to the same and furnished the details called for by the AO. After taking into consideration, the seized material, the written submissions of the assessee and the material available on record, the AO completed the assessments u/s 143(3) r.w.s 153A for AYs 2015-16 to 2017-18 vide orders dated 06.02.2020. In the assessment orders, the AO made the following additions:

| | AY 2015-16 | AY 2016-17 | AY 2017-18 |
|---|---|---|---|
| Total income admitted by assessee | 8,65,82,390 | 14,70,57,450 | 13,90,42,170 |
| Addition on account of investment as per para 4.4 | - | 1,10,00,000 | 3,83,33,330 |
| Addition on account of salary as mentioned in para | 28,33,33,333 | 6,66,66,667 | 16,50,00,000 |

| | | | |
|---|---|---|---|
| 4.4 / 5.4 | | | |
| Unaccounted investment declared before ITSC from undeclared business activity | - | 10,00,000 | 24,00,000 |
| Total income assessed | 36,99,15,723 | 22,57,24,117 | 34,47,75,500 |

5. Aggrieved by the order of the AO the assessee preferred appeals before the ld.CIT(A)-19, Chennai. Before the ld.CIT(A) the assessee has taken various grounds. After hearing the lengthy arguments of the assessee, the ld. CIT(A) adjudicated the appeals and summarized the detailed submissions of the assessee. On the first issue of "addition of unaccounted partner's remuneration received from the SRS mining", the ld.CIT(A) held as under:

**5.4** I have considered the ground of appeal raised by the Appellant regarding non-affording of sufficient opportunity to submit further details in support of the claims made in the return of income. The Appellant did not furnish specific contentions in respect of this ground of appeal in the written submission furnished during the appellate proceedings. On perusal of the assessment order, it is noticed that the AO issued a notice u/s 142(1)(ii) alongwith a questionnaire on 07.09.1998, having regard to the contents of the seized material. The AO subsequently issued several reminder letters / notices on 14.01.2019, 07.02.2019, 25.02.2019, 03.05.2019, 09.05.2019 and 03.06.2019 since the Appellant did not furnish the details sought by the AO in the questionnaire attached to the notice u/s 142(1)(ii) dated 07.09.2018. However, subsequently, the AR of the Appellant appeared before the AO from time to time and furnished the details sought by the AO. It is therefore evident from the said facts stated in the assessment order that the Appellant was afforded adequate opportunity during the assessment proceedings to furnish the details in support of the claims made in the return of income. Moreover, the Appellant has also been afforded sufficient opportunity during the appellate proceedings to furnish his contentions with regard to various issues disputed by him in the grounds of appeal. Hence, it is considered that the Appellant has not been deprived of adequate opportunity to

oresert his case. Therefore, this ground of appeal is held to be without merit and same is dismissed.

**ADDITION OF UNACCOUNTED PARTNER'S REMUNERATION RECEIVED FROM SRS MINING**

5.5 In the grounds of appeal, the Appellant disputed the addition of Rs. 28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- made towards unaccounted receipt of remuneration from the partnership firm M/s SRS Mining in the assessment orders for AY 2015-16 to AY 2017-18 respectively. The details of Ground Nos. dealing with the issue of unaccounted receipts of Partner's remuneration from M/s SRS Mining for AYs 2015-16 to 2017-18 are as follows:

| AY | Ground Nos. |
|---|---|
| 2015-16 | 2,3 & 4 |
| 2016-17 | 3,4 & 5 |
| 2017-18 | 3,4 & 5 |

**Findings of the AO in the assessment order**

5.6 In the assessment orders for AYs 2015-16 to 2017-18, the AO stated that the material seized during the course of the search at the registered office of M/s. SRS Mining at Bazullah Road, T.Nagar, Chennai and at the office at Yogambal Street, T.Nagar, Chennai on 08.12.2016 contained the details of salary / remuneration paid to the three partners of M/s SRS Mining including the Appellant in respect of the financial years relevant to AYs 2015-16 to 2017-18. The AO stated that the said details were found at Page Nos. 111 to 124 of the loose sheets seized vide ANN/KGAR/MPKSSR/LS/S-1 and at Page Nos.76 to 104 of the loose sheets seized vide ANN/KGA/SRS-YS/LS/S at the above mentioned two premises of M/s. SRS Mining respectively. Based on the information contained in the said seized loose sheets, the AO quantified the remuneration paid to the three partners and the share of each partner at 1/3rd of the total amount of remuneration for the AYs 2015-16 to 2017-18, as per the following details:

| Assessment Year | Total Remuneration paid as per seized material to the three partners (Rs.) | Share of each partner in the remuneration (Rs.) |
|---|---|---|
| 2015-16 | 85,00,00,000 | 28,33,33,333 |
| 2016-17 | 20,00,00,000 | 6,66,66,667 |
| 2017-18 | 49,50,00,000 | 16,50,00,000 |

**5.7** During the course of the assessment proceedings, the AO requested the Appellant to state whether the partner's remuneration of Rs.28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- has been admitted by him as income in his returns of income filed in response to notice u/s 153A for AYs 2015-16 to 2017-18. In the reply furnished, the Appellant denied the receipt of partner's remuneration as per the details available in the seized material for the concerned assessment years. The Appellant stated that the seized loose sheets referred to by the AO do not pertain to the firm M/s. SRS Mining or to the partners of the firm. The Appellant stated that the seized loose sheets do not reflect the payments received by him and the other two partners of the firm. The Appellant stated that no corroborative evidence was found by the department to establish that the relevant seized loose sheets pertained to M/s. SRS Mining or its partners. The Appellant accordingly contended that the partner's remuneration allegedly received by him as per the seized material has not been included in the total income admitted by him in the returns of income filed for AYs 2015-16 to 2017-18 in response notices u/s 153A.

**5.8** Without prejudice to the above contention, the Appellant stated that the payment of such remuneration to the partners by M/s.SRS Mining is not allowable as deduction in the hands of the said firm as per the provisions of sec 40(b). The Appellant stated that such remuneration which is not allowed as deduction in the hands of the partnership firm cannot be taxed in the hands of the individual partners, as the same would amount to double taxation. The Appellant requested that since the assessment in the case of the firm is still pending and has not reached finality and since the same has a direct bearing on the assessment in the hands of the partner, the proposal for making addition of the partner's remuneration in the hands of the partner may be dropped.

**5.9** After considering the reply of the Appellant, the AO observed that the same is not acceptable. The AO held that the partner's remuneration received by the Appellant for AYs 2015-16 to 2017-18 as per the seized material is required to be added to the total income of the Appellant for the concerned assessment years u/s 68 of the Act. However, the AO quantified the same by stating that since the assessment of the firm M/s. SRS Mining has not yet been completed, the addition of the partner's remuneration made in the hands of the Appellant is subject to revision u/s 155 of the Act once the assessment of the firm is completed. Accordingly, the AO made addition of undisclosed partner's remuneration of Rs.28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- in the assessment orders for AYs 2015-16 to 2017-18 respectively.

**APPELLANT'S SUBMISSIONS**

**5.10** The contertions of the Appellant as furnished in the written submission furnis during the appellate proceedings are extracted as under:

*It is submitted that loose sheet found and seized which was relied upon by the learned Assessing officer for making the addition of Rs.28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- for AYs 2015-16 to 2017-18 respectively as unaccounted income from salary u/s 68 (subject to revision u/s. 155 of the Act) was not pertaining to that of the Appellant, the loose sheet relied upon was not found and seized from the residence of the Appellant or from the office of the Appellant. The addition made is on assumption, surmise and conjecture and without any corroborative evidences available with the learned Assessing officer hence it is submitted the addition made in the assessment order cannot be sustained and is to be set aside and deleted.*

*It is submitted that the learned Assessing officer in the subsequently completed assessment order pertaining to that of the firm in which the Appellant was a partner has considered the very same seized document and concluded that all the transactions found recorded in the loose sheet seized pertains to that of the firm in which the Appellant was a partner and proceeded to determine the taxable income of the firm without considering the claim of the firm.*

*It is submitted that a writ petition was filed by the firm M/s.SRS Mining against the assessment order passed in the firm's case and the Hon'ble High Court of Madras vide an order in W.P.No.3625 of 2022 etc., dated 10.08.2022 has set aside the assessment orders passed in the case of the firm in which the Appellant is a partner with remand of the case to the Assessing officer to pass assessment order afresh and with a direction that it would be after taking into consideration of the findings recorded by the Hon'ble court in the said order and also holding that the assessee would be at liberty to advance all the submissions during the remand proceedings. The set aside assessment orders in the case of the firm are pending finalization.*

*The Appellant pleads to further submit that there is no other corroborative evidences available with the learned Assessing officer apart from the loose sheet relied upon by him to conclude that the Appellant had received salary from the firm. The Appellant was never questioned/confronted about the seized loose sheet and the details found recorded in the same during the course of the search nor subsequently during the post search proceedings as such treating it as reason for concluding the document as pertaining to that of the Appellant is not warranted.*

***It is further submitted that the seized document relied upon by the learned Assessing officer does not have the hand writing or signature of the Appellant or his accountant, neither it was seized from the premises of the Appellant in which the Appellant was a partner. Hence the loose sheets do not pertain to the firm. The loose sheets are not authentic as they are not certified or verified by any of the partners. Hence the remuneration as per the seized material is not reliable and denied and the same is to be treated as a dump document as held by various judicial pronouncement made by Hon'ble High Court/Supreme Court.***

***The Appellant has admitted a sum of Rs.2,40,00,000 and Rs.3,60,00,000/- towards remuneration to partners for AYs 2015-16 and 2016-17 respectively which is as per the provisions of section 40 (b)(ii) of the Act which is also authorized by the Partnership Deed. Since the assessee has denied the seized material, the addition made towards partners remuneration on the basis of the seized material cannot be accepted. It is also not authorized by the partnership Deed. Copies of the acknowledgement of the returns of income of the firm for the Assessment Years 2015-16 to 2017-18 along with statement of computation of income and copy of partnership deed are enclosed.***

*It is submitted that the Learned Assessing Officer has acted more on suspicion and doubt than on evidence. It is settled principle of that suspicion however strong cannot take the place of evidence. The following case laws are quoted in support: –*

*(i) Uma Charan Shaw & Brothers 37 ITR 271*
*(ii) CIT vs. Anupam Kapoor 299 ITR 179 (P&H)*
*(iii)CIT vs. Dhiraj Lal Girdhari Lal 26 OTR 756*
*(iv) State Vs. Gulzari Lal Tondon AIR 1979 (SC) 1382*
*(v) A. Naidu vs. State of Maharastra SC 1537*
*(vi)Krishnand vs. State of Mandharzinghji P. Jadera (2005) 281 ITR 0019 AIR 1977 SC 796*
*(vii)Dhakeshwari Cotton Mills 26 ITR 775 (SC)*
*(viii) Omar Shac 37 ITR 151 (SC)*
*(ix) Lal Chand Bhagat Ambika Ram (1959) 37 ITR 288*

*(x) It has been held by the Hon'ble ITAT Jaipur Bench Jaipur in the case of Moonchand Kumawat & Sons vs. DCIT Ajmer vide order dated 20.02.2009 42 Taxworld 241 that if a document does not contain any date/ and name and only contains numerical figures then such document is vague and dump document. No addition can be made on the basis of such document.*

*(xi) Similarly in the case of Assistant Commissioner of Income Tax vs. Satyapal Wassan it was held by Hon'ble ITAT Jabalpur that295 ITR 352a document found during search must be a speaking one. Document*

*must reflect all the details about the transaction of the assessee in the relevant Assessment Year. If there is any gap the same has to be filled by the Learned Assessing Officer through post search enquires and co-relate the material found with the business of the assessee, without this no addition can be made on the basis of a loose paper.*

*(xii) Similarly in the case of K.V. Laxmi Savitri Devi Vs. ACIT60 DTR 148 it was held by the ITAT Hyderabad Bench that "No addition can be made on the basis of a loose paper which does not contain the name and the date of payment. The department is precluded in drawing inferences on the basis of suspicion, conjecture and surmises and no addition can be made on the basis of such dump document or loose sheets. In view of this it is clear that when the paper is undated and does not contain any name the same has to be treated as a dump document.*

*(xiii) It was also held in the following cases that addition could not be made on the basis of uncorroborated noting on loose sheets and papers –*

*(1) P. Goyal VS. DCIT (2002) 77 TTJ 1 (Mum)*
*(2) Chandra Mohan Mehta Vs. ACIT (1999) 65 TTJ 327 (Pune)*
*(3) Bansal Strips Pvt. Ltd. VsACIT (2006) 100 TTJ 665 (Del)*
*(4) Kishan Chand Sobhraj Mal (1991) 42 TTJ 423 (JP)*
*(5) CIT Vs. Naresh Khattar (HUF) (2003) 261 ITR 664 (Del)*
*(6) Lal Chand AgarwalvsACIT 21 TW 213 (ITAT Jaipur)*
*(7) CIT Vs. S.M. Agarwal (2007) 293 ITR 43 (Del)*
*(8) CIT Vs. Girish Choudhary (2008) 296 ITR 619 (Del)*
*(9) Jayanti Lal Patel Vs. ACIT (1998) 233 ITR 588 (Raj)*
*(10) Rakesh Goyal Vs. ACIT (2004) 87 TTJ 151 (Del)*
*(11) ITO Vs. Manna Lal Jhalani 22 TW 551 (ITAT Jaipur)*
*(12) Hissaria Brother Vs. ACIT 22 TW 684 (ITAT Jaipur)*
*(13) DCIT Vs. Country wide Builde state Pvt Ltd. (2012) 48 TW 50 (Jaipur ITAT) order dated 29.06.2012 ITA No. 961/JP/2011*

*The Appellant further submits that while finalizing the firm's accounts for the AYs 2015-16 and 2016-17, remuneration to the partners to the extent of Rs.7,20,00,000 and Rs.7,20,00,000/- respectively has been debited in the books. This is reflected in the P & L Account of the partnership firm which is attached to the Return of Income furnished before the date of search. Out of this, Appellant had received Rs.2,40,00,000 and Rs.3,60,00,000/- and this has been admitted in the returns of income furnished AYs 2015-16 and 2016-17. The Appellant further submits that while finalizing the firm's accounts for AY 2017-18, no remuneration to the partners has been debited in the books. This is reflected in the P & L Account of the partnership firm which is attached to the Return of Income furnished. Therefore, there is no justification to make*

*further addition of Rs.28,33,33,3337/-, Rs.6,66,66,667 and Rs.16,50,00,000/- as salary received for AYs 2015-16 to 2017-18 respectively based on the loose sheet found and seized by the department without any other corroborative evidences other then the entries found reflected in the loose sheet.*

*It is further submitted that the addition made by the Assessing Officer is stated to be representing salary received by the Appellant from the partnership firm SRS Mining. Salary received / receivable by a person from the firm in which he is a partner is assessable as income in his hands as per section 28(v) of the Income-tax Act, 1961. Section 40(b) (v) imposes restrictions on the quantum of such salary which is allowable as deduction in the hands of the partnership firm and such restrictions are to be based on "book profits" of the relevant previous year. The term "Book profits" has been defined in Explanation 3 to section 40(b) (v) in the following words:*

*"For the purpose of this clause, "book profits" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit."*

*Therefore, it is amply clear that what is debited in the firm's books alone is taxable in the hands of the partners. The learned Assessing officer has not brought out on record or in the assessment order any concrete findings with documentary evidences that the Appellant had in fact received more salary than what had been admitted in the return of income, nor that the partnership firm had in fact paid anything more than what was debited in its accounts as salary to the partners. The modus of payment of such salary to the Appellant is also not established by the learned Assessing officer and the said amount is also not found or seized from the Appellant during the course of the search, nor any un disclosed investments reflecting the equaling amount was found by the department, the additions are made only on assumptions and doubt which cannot be upheld in a search and seizure assessment. The only evidence relied on by the Assessing Officer is a loose sheet of paper found and seized from a third party which also does not indicate that so much of amounts were paid as salary to the partners of the firm,*

*It is further submitted that even if the contents of the seized materials are assumed to be correct, the same cannot be considered to be taxable in the hands of the Appellant since the same is not eligible for deduction in the hands of the firm and hence it cannot be included in the income of the partners as per the proviso to section 28(v) of the Act which is re-produced below for easy reference:*

***Profits and gains of business or profession.***

***(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:***

***Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted;***

*In view of the above facts and considering the legal position as mandated under the provisions of the Act it is prayed that the additions so made as salary received amounting to Rs.28,33,33,3337/-, Rs.6,66,66,667 and Rs.16,50,00,000/- for AYs 2015-16 to 2017-18 respectively are to be declared as illegal and the same may be directed to be deleted and relief allowed to the Appellant.*

*It is respectfully submitted that the ratio of the aforesaid cases relied upon by the Appellant are fully applicable to the facts of the case of the Appellant It is prayed that the Hon'ble Commissioner of Income-tax(Appeals) may be pleased to consider the facts of the case and submission as above may kindly be taken on record and the exorbitant additions made to the returned income of the Appellant may be set aside and directions may be issued to the learned Assessing officer to delete the additions made in the assessment order and justice may be rendered as prayed in the appeal.*

**DECISION**

**5.11** I have carefully considered the written submission of the Appellant, the findings of the AO in the assessment orders for AYs 2015-16 to 2017-18 and the material available on record. In the assessment orders for the said assessment years, the AO made addition of unaccounted receipts of partner's remuneration from M/s SRS Mining based on the entries found in the loose sheets seized from the two office premises of the said firm situated at Bazullah Road and Yogambal Street in Chennai during the course of search conducted in the case of Sri. M. Premkumar, Sri. K. Srinivasulu, Sri. J. Sekhar Reddy and M/s SRS Mining on 08.12.2016 (hereinafter referred to as "SRS Group"). The unaccounted income quantified by the AO on the said basis amounted to Rs.28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- for AYs 2015-16 to 2017-18 respectively.

**5.12** The contentions advanced by the Appellant in the written submission disputing the said addition on various grounds have been carefully examined. The Appellant contended that the seized loose sheets relied upon by the AO for making the addition towards unaccounted receipts

of partner's remuneration from M/s. SRS Mining were not found and seized either from the office premises of the said firm or from the residence of the Appellant. The Appellant contended that the seized loose sheets do not pertain to M/s. SRS Mining and they are not authentic as they have not been certified or verified by any of the partners. The Appellant pointed out that the seized loose sheets relied upon by the AO do not have any reliability as they did not contain the handwriting or the signature of the Appellant or other partners or any employee of the firm.

**5.13** In this regard, it is noticed on perusal of the Panchnama dated 11.12.2016 relating to the office premises of M/s. SRS Mining at Bazullah Road, T.Nagar, Chennai that loose sheets were seized vide ANN/KGAR/MPKSSR/LS/S-1 from the said premises on the said date. The AO relied on the Page Nos. 111 to 124 of the said seized loose sheets with regard to the receipt of unaccounted partner's remuneration by the Appellant from M/s. SRS Mining. Further, it is noticed on perusal of Panchnama dated 03.02.2017 relating to the office premises of M/s. SRS Mining at Yogambal Street, T. Nagar, Chennai that loose sheets were seized vide ANN/KGA/SRS-YS/LS/S from the said premises on the said date. The AO relied on the Page Nos.76 to 104 of the said loose sheets also with regard to the receipt of unaccounted partner's remuneration by the Appellant from M/s. SRS Mining. Hence, it is evident from the record that the loose sheets relied on by the AO for making the addition towards unaccounted partner's remuneration from M/s. SRS Mining in the hands of the Appellant have been found and seized from the office premises of M/s. SRS Mining only. Hence, the contention of the Appellant that the relevant loose sheets were neither found in the office premises of M/s. SRS Mining nor in the residence of the Appellant is found to be factually incorrect and the same is liable for rejection. The Ground No.3 for AY 2015-16 and Ground No.4 for AYs 2016-17 and 2017-18 dealing with this issue are therefore dismissed.

**5.14** As regards the contention of the Appellant that the seized loose sheets do not pertain to the firm M/s. SRS Mining, it is seen that the Appellant did not furnish any reasons backed by evidence in support of the said contention. As mentioned in the preceding paragraphs, the relevant loose sheets were found and seized from the office premises of M/s. SRS Mining. In view of the provisions of sec 132(4A) and 292C, the material seized from the premises of M/s. SRS Mining is required to be presumed to be belonging to M/s. SRS Mining and the burden is on the Appellant to rebut the said presumption. However, no evidence has been furnished by the Appellant for rebutting the said presumption. Hence, the contention of the Appellant that the seized loose sheets do not pertain to M/s. SRS Mining is held to be untenable. The

contention of the Appellant that the seized loose sheets do not have any authenticity or reliability since they are not in the handwriting of any of the partners or employees of the firm and since they have not been verified and certified by any of the partners is also held to be unacceptable in view of the rebuttable presumption laid down in sec 132(4A) and 292C and in the absence of furnishing of any evidence by the Appellant for rebutting the said presumption. The Ground No.4 for AY 2015-16 and Ground No.5 for AYs 2016-17 and 2017-18 dealing with this issue are therefore dismissed.

**5.15** The Appellant contended that the seized loose sheets constitute dumb documents which are not reliable and no addition can be made based on the contents of the same. The Appellant placed reliance on decisions of various Tribunals to contend that no addition can be made on the basis of dumb documents which do not reflect all the details about the transactions. In this regard, it is noticed on careful perusal of the relevant seized loose sheets that the same are in the nature of monthly summary sheets containing details of the gross income from various sand mines, the expenses incurred at the mining sites, the expenses incurred at the Head Office, the net profit from the said business for the month, payments made towards partners remuneration, sharing of the balance profit among the partners, opening cash balance and closing cash balance. It is noticed that the month and the year to which such monthly summary sheets pertain to are clearly mentioned at the top of the relevant seized loose sheets. It is evident from the nature of details available in the seized loose sheets that the same contain all the particulars required to decipher the relevant transactions. Hence, the contention of the Appellant that the seized loose sheets constitute dumb documents which do not have evidentiary value is held to be unacceptable.

**5.16** The Appellant contended that no corroborative evidences are available with the AO with regard to the contents of the seized loose sheets and no addition can be made based on the same in the absence of corroborative evidence. The Appellant placed reliance on the decisions of various Tribunals to contend that addition cannot be made on the basis of uncorroborated notings in loose sheets and papers. It is considered that this contention of the Appellant has no merit since the requirement of having evidence to corroborate the contents of the seized material is applicable in cases where the seized material is dumb in nature and the contents of the same are required to be understood/appreciated with the help of any other corroborative material. As already mentioned in the preceding paragraph, the relevant seized material in this case do not constitute dumb documents and the same are self-contained in nature, which reveal all the details with regard to the transactions found noted therein.

**5.17** The Appellant contended that the AO acted more on suspicion and doubt rather than on evidence. The Appellant stated that it is a settled principle of Law that suspicion however strong cannot take the place of evidence. The Appellant placed reliance on several judicial decisions in support of this legal principle. It is considered that this contention also does not have merit in the facts of the case. The Appellant has not pointed out the specific instances of inferences drawn by the AO which are based on suspicion and not based on evidence. As already mentioned earlier, the seized loose sheets relied upon by the AO for concluding that the Appellant was in receipt of unaccounted partner's remuneration from M/s. SRS Mining contained all the relevant particulars to facilitate deciphering of the transactions noted therein. It is noticed that the conclusion drawn by the AO is based on the said material and that no part of the said conclusion is based on mere suspicion or presumption.

**5.18** The Appellant stated that remuneration to partners has been debited to the tune of Rs.7.20 crores each for AYs 2015-16 and 2016-17 in the books of account of M/s. SRS Mining, out of which the Appellant is in receipt of Rs.2.40 crores and Rs.3.60 crores respectively. The Appellant stated that the said remuneration has been admitted by him as income in the returns of income filed for the concerned assessment years. The Appellant pointed out that the provisions of sec 40(b)(v) impose restriction on the quantum of partner's remuneration which is allowable as deduction in the hands of the partnership firm. The allowable deduction is required to be computed based on the "book profits" of the firm for the relevant previous year, which is the net profit as shown in the P&L Account computed in the manner laid down in chapter IV-D of the Act as increased by the aggregate remuneration payable to the partners, if such amount has been deducted while computing the net profit. The Appellant pointed out that the remuneration receivable from a firm is assessable as income in the hands of the partner as per the provisions of sec 28(v) of the Act. However, as per the proviso to sec 28(v), the partner's remuneration to the extent it has not been allowed as deduction in the hands of the firm u/s 40(b) is not includible in the hands of the partner. The Appellant contended that even if it is assumed that the Appellant is in receipt of partner's remuneration as per the seized material, the same is not an allowable deduction in the hands of the firm and consequently, the same cannot be included in the income of the partner in view of the proviso to sec 28(v).

**5.19** The contention of the Appellant has been carefully examined. As per the provisions of sec 40(b)(ii), the remuneration paid to a working partner does not qualify for deduction while computing the total income of the firm unless such payment of remuneration is authorised by and is in accordance with the terms of the partnership deed. Further, as per provisions of sec

40(b)(v), there is a restriction on the quantum of partner's remuneration which is allowable as deduction in the hands of the partnership firm. The allowable deduction is required to be computed based on the "book profits" of the firm for the relevant previous year, which is the net profit as shown in the P&L Account computed in the manner laid down in chapter IV-D of the Act as increased by the aggregate remuneration payable to the partners, if such amount has been deducted while computing the net profit. The remuneration received from the firm is liable to be treated as the business income in the hands of the partner as per the provisions of sec 28(v) of the Act. However, as per the proviso to sec 28(v), the partner's remuneration to the extent it has not been allowed as deduction in the hands of the firm u/s 40(b) is not includible in the hands of the partner.

**5.20** As per the scheme of the Act as mentioned above, the remuneration paid to the partners is taxable in the hands of the partners only when deduction has been allowed in respect of the same in computing the income of the partnership firm. Such deduction is allowed in the hands of the firm when the conditions laid down in sec. 40(b)(ii) that the payment of remuneration is authorised by and is in accordance with the terms of the partnership deed are satisfied and the deduction claimed is not in excess of the monetary limits specified in sec 40(b)(v). The remuneration received by a partner is liable for tax in the hands of the partner, only in such cases and to the extent to which deduction for the same has been allowed in computing the income of the firm.

**5.21** In this connection, it is noticed on perusal of the partnership deed of M/s. SRS Mining dated 29.11.2013, which is applicable for the assessment years under consideration, that it authorizes payment of remuneration to all the three partners (including the Appellant) who are designated as the working partners. As regards the quantum of remuneration to be paid to them, the partnership deed specifies that the total amount of remuneration payable to the partners shall be worked out on the basis of the "book profit" and the same shall be 90% of the book profit on the first Rs.3 lakhs of book profit and 60% of the balance amount of book profit. It provides that the three partners Shri J Sekar, Sri S Ramachandran and Shri K Rathinam are entitled to remuneration at 40%, 30% and 30% respectively of the total amount of remuneration so worked out. Further, it specifies that the term "book profit" shall be considered as defined in Explanation 3 to sec 40(b) of the Income Tax Act. It is evident from the said terms of the partnership deed that the quantum of remuneration which is payable to the partners and which is eligible for deduction in the hands of the partnership firm as per the provisions of sec 40(b)(ii) and 40(b)(v) is based on "book profit" as defined in Explanation 3 to sec 40(b).

**5.22** In the said Explanation to sec 40(b), it is stated that the term "book profit" means the net profit as shown in the P&L Account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of remuneration paid / payable to all the partners, if such amount has been deducted while computing the net profit. In view of the same, the quantum of partners remuneration which is authorised by the partnership deed and which is eligible for deduction u/s 40(b) in the hands of M/s. SRS Mining is based on the quantum of net profit as per P&L Account. In the seized loose sheets, which were relied on by the AO, it is shown that the partner's remuneration paid in cash, which is sought to be taxed by the AO as unaccounted partner's remuneration in the hands of the Appellant and other two partners, has been met out of the unaccounted cash profits of the firm. Such unaccounted profits do not form part of the net profit as per P&L Account of the firm. As a consequence, the remuneration paid to the partners out of such unaccounted profits does not qualify as the remuneration authorised by and in accordance with the terms of the partnership deed and the such remuneration is therefore not eligible for deduction u/s 40(b) in the computation of the total income of the partnership firm M/s SRS Mining.

**5.23** As already stated earlier, the partner's remuneration to the extent to which it has not been allowed as deduction in the hands of the partnership firm as per the provisions of section 40(b) is not liable to be included in the total income of the concerned partners, in view of the Proviso to section 28(v), since the said amount has already been subjected to tax in the hands of the firm. Such partner's remuneration which has suffered tax in the hands of the firm on account of not being eligible for deduction u/s 40(b), does not constitute taxable income in the hands of the partner. If the same is taxed once again in the hands of the partner, it results in double taxation, which is sought to be prevented by the statutory provisions by way of the Proviso to section 28(v) of the Act. In the present case, since the partner's remuneration paid in cash by M/s SRS Mining as per the notings found in the seized material is not eligible for deduction u/s 40(b) in the computation of the total income of the said partnership firm for the reasons discussed in the preceding paragraph and thereby suffers tax in the hands of the firm itself, the said remuneration received by the partners cannot be brought to tax in the hands of the concerned partners as per the Proviso to sec 28(v) of the Act.

**5.24** In view of the aforesaid discussion, it is held that the unaccounted partners remuneration received by the Appellant from M/s. SRS Mining as per the seized loose sheets is not liable to be included in the total income of the Appellant. Hence, the AO is directed to **delete** the addition of Rs.28,33,33,333/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- made in the assessment orders for AYs 2015-16 to 2017-18 respectively towards unaccounted receipt of partner's remuneration. The Ground of appeal No.2 for AY 2015-16 and Ground of appeal No.3 for AYs 2016-17 and 2017-18 are accordingly **allowed**.

On the second issue of "unaccounted investment in immovable property", the ld.CIT(A) held as under:

Unaccounted Investment in Immovable Property:

5.26 In the grounds of appeal for AYs 2016-17 and 2017-18, appellant disputed addition of Rs.1,10,00,000/- and Rs.3,83,33,330/- made towards unaccounted invested in immovable property in the assessmen order for

AYs 2016-17 and 2017-18 respectively. The details of ground Nos.dealing with the issue of unaccounted investment in immovable property for AYs 2016-17 and 2017-18 are as follows:

| Assessment year | Ground No |
|---|---|
| 2016-17 | 2 |
| 2017-18 | 2 |

Findings of the AO in the assessment order:

5.27 In the assessment orders for Assessment Years 2016-17 and 2017-18 Assessing Officer stated that during course of search at the registered office of M/s. SRS Mining at Bazullah Road, T. Nagar, Chennai on 08.12.2016, certain books of accounts and documents were seized vide ANN/KGAR/MPKSSR/B&D/S-2. The AO stated that the seized material contained details of payments made to various persons. The AO stated that the notings in the seized material revealed that aggregate payments of Rs.14.8 crores were made to Shri Gopu Rajagopal comprising of payment of Rs.3.30 crores and Rs.11.50 crores made during the previous years relevant to AYs 2016-17 and 2017-18. The AO stated that Shri Gopu Rajagopal is the Authorised Signatory of M/s. Kara Property Ventures LLP, Mumbai. The AO stated that the subsequent enquiries revealed that M/s.Kara Property Ventures LLP is constructing residential apartments at Nungambakkam High Road, Chennai and the 3 partners of M/s.SRS Mining including the Appellant have booked one flat each in the said project.

**5.28** In view of the said information, Shri Gopu Rajagopal was also subjected to search action u/s 132 of the Act on 21.12.2016. During the course of the search, sworn statement of Shri Gopu Rajagopal was recorded with reference to the material seized vide ANN/KGAR/MPKSSR/B&D/S-2 in the case of M/s. SRS Mining. In response to Q.No.17 of his statement, Shri Gopu Rajagopal stated that he is the Authorised Signatory of M/s.Kara Property Ventures LLP and that he received cash payments aggregating to Rs.3.3 crores and Rs.11.5 crores during the FYs 2015-16 and 2016-17 from the Appellant, Shri K Rathinam and Shri J Sekar Reddy who have purchased one apartment each in the project being developed by M/s.Kara Property Ventures LLP. He stated that the said payments in cash were received by him on behalf of M/s.Kara Property Ventures LLP and that the same is on-money for the said property transactions which is outside the books of account of M/s.Kara Property Ventures LLP. He stated that he admits the said unaccounted cash receipts as additional income for the respective financial years.

**5.29** Having regard to the same, the AO requested the Appellant in the notice issued during the assessment proceedings to confirm whether he has declared the cash payments made by him to Shri Gopu Rajagopal towards purchase of property from M/s. Kara Property Ventures LLP in the returns of income filed by him for AYs 2016-17 and 2017-18. In the reply dated 21.01.2020, the Appellant stated that he booked a flat in the project at Nungambakkam promoted by M/s.Kara Property Ventures LLP and he paid an advance of Rs.25 lakhs by cheque on 09.04.2015 and Rs.2,29,20,000/- by cheque on 26.09.2015 that the said payments of advance aggregating to Rs.2,54,20,000/- are duly accounted in his books of account and are duly reflected in the financial statements filed along with his return of income for AY 2016-17. He stated that he is not aware of the seized loose sheets referred to by the AO and that he was not

questioned regarding the contents of the said loose sheets either during the course of the search or during the post search enquiries. The Appellant stated that he did not make any cash payments to M/s. Kara Property Ventures LLP either directly or through Shri Gopu Rajagopal.

**5.30** The Appellant pointed out that Shri Gopu Rajagopal has retracted the statement given by him during the search by filing an affidavit dated 05.01.2017 before the department. The Appellant reiterated that no payments in cash have been made by him and other two partners of M/s. SRS Mining over and above the payments made by them through cheques / bank transfer. In view of this, the Appellant stated that the question of admitting the amounts as per seized material as undisclosed income in his hands and the hands of other two partners of M/s.SRS Mining does not arise.

**5.31** Further, the Appellant stated that he has cancelled the booking of the flat subsequent to the search vide his requisition letter dated 18.06.2018 addressed to M/s.Kara Property Ventures LLP. He stated that M/s.Kara Property Ventures LLP has accepted his request and issued a letter confirming the cancellation of the booking. The Appellant pointed out that in the said letter, M/s.Kara Property Ventures LLP has confirmed that the Appellant paid advance of Rs.2,54,20,000/- only through cheques as against the total consideration of Rs.12,81,45,000/-. The Appellant accordingly contended that the payment of cash by him towards purchase of the property has not been established with any corroborative evidence other than the statement of Shri Gopu Rajagopal which has already been retracted by him. The Appellant contended that since the witness has turned hostile as evidenced by the retraction affidavit filed by him, the evidence relied upon by the department loses significance and becomes void and consequently, the same cannot be used against him for arriving at undisclosed income in his hands in the income tax proceedings.

**5.32** After considering the reply furnished by the Appellant, the AO observed that the seized material has revealed that M/s. Kara Property Ventures LLP received cash of Rs.14.8 crores towards sale of apartment to the three partners of M/s. SRS Mining. The AO stated that the said cash receipts have been added to the total income of Shri Gopu Rajagopal u/s 68 of the Act as the said person accepted the same in his sworn statement u/s 132(4) of the Act. The AO stated that the cash payments made by the three partners of M/s. SRS Mining including the Appellant have to be assessed as undisclosed investment u/s 69 of the Act in their hands, consistent with the stand taken in the case of Shri Gopu Rajagopal.

**5.33** In the absence of details of the cash payments made by each individual partner, the AO stated that the aggregate cash payments of Rs.3.30 crores and Rs.11.50 crores made during the previous years relevant to AYs 2016-17 and 2017-18 are apportioned equally among the three partners for the purpose of quantifying the undisclosed investment u/s 69. Accordingly, the AO made addition of Rs.1.10 crores and Rs.3,83,33,330/- in the hands of the Appellant towards undisclosed investment u/s 69 for AYs 2016-17 and 2017-18 respectively.

**APPELLANT'S SUBMISSIONS**

**5.34** The contentions of the Appellant as furnished in the written submission furnished during the appellate proceedings are extracted as under:

> ***It is submitted that the learned Assessing officer has heavily relied on the statement recorded from one Mr. Shri Gopu Rajagopal and a document seized from him for concluding that there were cash payments made for purchase of property at Nungambakkam. However, the learned Assessing officer did not consider the fact that the very same individual has retracted on 03.01.2017, his statement given at the time of search by submiting an affidavit duly notarized by a Notary Public during the course of post search proceedings before the Investigation officer which is duly acknowledged and available on the record of the learned Assessing officer.***
>
> *It is submitted that the Appellant had booked a flat at Nungambakkam, promoted by M/s. Kara Property Ventures LLP and paid an advance of Rs.2,52,40,000/- by way of cheque, the above said payment is duly accounted in the books of accounts of the Appellant and reflected in the financial statement filed along with the returns of income for the AY 2016-2017 & 2017-18. Subsequently due to delay in completion of the project, the Appellant had requested the seller to return the advance made which has been duly acknowledged by the said party and the advance paid is reflected in the books of accounts of the Appellant from the date of advance till date, copies of the communication pertaining to the transaction under consideration and financial statements are submitted for the kind perusal and consideration of the Hon'ble Commissioner of Income-tax.*
>
> ***Due to delay in the project, the booking of the flat was cancelled by the assessee and letter confirming the cancellation of the flat given by M/s Kara Property Ventures was submitted to the Assessing Officer during the course of assessment proceedings. It elucidates the fact that no amount has been paid in cash for booking of the property. The Assessing Officer has not disputed the evidence nor brought any adverse evidence on record while making the addition in the hands of the assessee.***

***It is submitted that the said loose sheet which is being relied upon by the learned Assessing officer for making the addition was found and seized from the premises of the firm M/s SRS Mining and not from the premises of the Appellant, hence the same cannot be considered as income of the Appellant without attributing or establishing the source for such funds in the hands of the individual.***

***Further, the register wherein the payments were alleged to have been made to Gopu Rajagopal were seized from the premises of M/s SRS Mining vide Annexure ANN/KGAR/MPKSSR/B&D/S-2. The Appellant further submits that the seized material contains several cash receipts and cash payments and moreover there is no mention in the seized material that the payments to Gopu Rajagopal were made by the partners of the firm, it cannot be held that the source for the payments is from the partners and hence it is submitted that no addition can be made in the hands of the partners.***

***Further the Appellant was not questioned about the loose sheet said to have been found and seized from the firm regarding the transaction or on cash payments made relating to a purchase of the property during the course of the search action nor during the post search proceedings.***

*It is submitted that the learned Assessing officer proceeded to make the addition in the hands of the Appellant without appreciating the fact that the person from whom statements were recorded during the search action conducted in their premises had retracted his statement given at the time of search by filing an affidavit and as such the same cannot be relied upon for making the addition as it does not have any evidence value and thus cannot be utilized against the Appellant in the assessment order.*

*It is submitted that since the witness has turned hostile as evidenced by the Affidavit filed by him, the evidence relied upon by the learned Assessing officer loses significance and becomes void, since the witness of the department has retracted his own statement before the department and becomes hostile, the same cannot be used against the Appellant for considering it as reliable piece of evidence in arriving at the undisclosed income in the income-tax proceedings relating to search and seizure assessment.*

*It is further submitted that the learned Assessing officer had not brought on record with corroborative evidences the sources available with the Appellant for such an investment, that the learned Assessing officer has proceeded to conclude that the Appellant had invested in the property at Nungambakkam which is done on doubt and without any corroborative evidences and not considering the submissions and documents substantiating the transactions produced during the course of assessment proceedings.*

*It is prayed that the Hon'ble Commissioner of Income-tax(Appeals) may be pleased to consider the facts of the case and the submission as above and the case laws relied upon may kindly be taken on record and the exorbitant additions made to the returned income of the Appellant may be set aside and directions may be issued to the learned Assessing officer to delete the additions made in the assessment order and justice may be rendered as prayed in the appeal.*

**DECISION**

**5.35** I have carefully considered the written submission of the Appellant, the findings of the AO in the assessment orders for AYs 2016-17 and 2017-18 and the material available on record. In the assessment orders for the said assessment years, the AO made addition of unaccounted investment in immovable property based on the entries found in the register seized from the office premises of M/s SRS Mining situated at Bazullah Road, T.Nagar, Chennai during the course of search conducted in SRS Group cases. The unaccounted investment quantified by the AO on the said basis amounted to Rs.1,10,00,000/- and Rs.3,83,33,330/- for AYs 2016-17 and 2017-18 respectively.

**5.36** The contentions advanced by the Appellant in the written submission disputing the said addition on various grounds have been carefully examined. The Appellant pointed out that the register, wherein the alleged payments made to Sri.Gopu Rajagopal towards purchase of immovable property are shown, was seized from the premises of the firm M/s SRS Mining vide ANN/KGAR/MPKSSR/B&D/S-2. The Appellant contended that since the said material was not found and seized from his residence, the same cannot be considered as income of the Appellant without attributing or establishing the source of such funds in the hands of the Appellant. The Appellant pointed out that the register seized from the office premises of M/s SRS Mining has notings of several cash receipts and cash payments including the payments allegedly made to Sri. Gopu Rajagopal. The Appellant contended that since the register is seized from the premises of the firm and there is no mention in the register that payments to Sri. Gopu Rajagopal were made by the partners of the firm, it cannot be held that the source of the said payments is from the partners. The Appellant therefore contended that no addition can be made in the hands of the partners in respect of the said alleged payments to Sri. Gopu Rajagopal.

**5.37** Further, the Appellant contended that the AO heavily relied on the statement recorded from Sri Gopu Rajagopal for concluding that cash payments were made by the Appellant towards purchase of property at Nungambakkam and that the AO did not consider the fact that Shri Gopu Rajagopal has retracted his statement given at the time of search by submitting a duly notarised affidavit during the course of post search proceedings on 03.01.2017 which is available on the record of the AO. The Appellant contended that the retracted statement of Shri Gopu Rajagopal cannot be relied upon for making the addition as the same does not have any evidentiary value. Further, the Appellant contended that since the said witness of the department has retracted his statement and became hostile, his statement cannot be considered as a reliable piece of evidence which can be used against the Appellant for arriving at undisclosed income in the hands of the Appellant.

**5.38** The Appellant also submitted that the booking of the flat at Nungambakkam was cancelled by him due to delay in the project and he had requested the seller M/s. Kara Property Ventures LLP to return the advance paid by him. The Appellant stated that the seller issued a letter confirming the cancellation of the flat, a copy of which was submitted to the AO during the course of assessment proceedings. The Appellant pointed out that the letter issued by M/s.Kara Property Ventures LLP elucidates the fact that no advance has been paid by him in cash for booking the property. The Appellant stated that the AO did not dispute the said evidence furnished by him and did not bring on record any adverse corroborative evidence while making the addition of unaccounted investment in the hands of the Appellant.

**5.39** The contentions advanced by the Appellant have been carefully examined. The seized material containing details of the amounts of Rs.3.30 crores and Rs.11.50 crores paid to Shri Gopu Rajagopal during the FYs 2015-16 and 2016-17 is represented by a register seized from the office premises of the partnership firm M/s.SRS Mining vide ANN/KGAR/MPKSSR/B&D/S-2 during the course of the search in SRS Group of cases. The Appellant is one of the partners of the said firm. As stated by the AO in the assessment order, the said register contained details of cash payments made to various persons. On perusal of the copies of the relevant seized register, it is noticed that the cash payments made to Shri Gopu Rajagopal are included in the numerous cash payments found noted in the said seized register. Out of such numerous cash payments in the register, the AO considered the cash payments made to Shri Gopu Rajagopal alone as the unaccounted payments made by the Appellant and the other two partners of M/s. SRS Mining on the ground that the said cash payments were

made as advance payments in the nature of on-money for purchase of one flat by each of the three partners in the project being constructed by M/s.Kara Property Ventures LLP.

**5.40** However, the said conclusion of the AO has been erroneously arrived at without considering the source of the said cash payments and without establishing that the sources are attributable to the partners themselves (including the Appellant). The relevant register containing the notings of cash payments made to Shri Gopu Rajagopal was found and seized from the office premises of M/s. SRS Mining and it contains details of numerous other cash payments made to various persons. On perusal of the copies of the relevant seized material it is noticed that there is no mention therein regarding the sources of the cash payments noted therein. Further, it is observed that there is no specific mention in the seized material to show that the cash payments made to Shri Gopu Rajagopal have been sourced from the Appellant and the other two partners of M/s. SRS Mining. In the absence of any such evidence in the seized material, the inference drawn by the AO that the said cash payments to Shri Gopu Rajagopal were made by the three partners from their own sources of income is considered to be a mere presumption without supporting evidence. Moreover, since the register was seized from the premises of M/s. SRS Mining and contains several other cash payments also, the provisions of sec 132(4A) and 292C lay down a rebuttable presumption that the said seized material belongs to M/s. SRS Mining. The said rebuttable presumption is not applicable against the partners of the firm unless the seized material itself contains evidence that the cash payments to Shri Gopu Rajagopal noted therein were made by the partners themselves. Hence, it is considered that the seized material does not constitute adequate evidence to infer that the cash payments stated to have been made to Shri Gopu Rajagopal therein represented unaccounted payments made by the three partners including the Appellant.

**5.41** As regards the factual correctness of the cash payments stated to have been made to Shri Gopu Rajagopal, the AO relied on the sworn statement of Shri Gopu Rajagopal recorded on 21.12.2016 in the course of search at the residence of the said person. In the said statement, Shri Gopu Rajagopal admitted that he received cash payments aggregating to Rs.14.80 crores in his capacity as the Authorised Signatory of M/s. Kara Property Ventures LLP towards the payments for the apartments purchased by the three partners in the project being developed by the said firm. However, Shri Gopu Rajagopal retracted his sworn statement by filing a notarised affidavit on 03.01.2017. In the affidavit, he stated that he was interrogated continuously for more than 30 hours and he was under pressure and completely exhausted both mentally and

physically during the said interrogation. He stated that he was not aware as to what answers have been written in the statement and that the said statement was recorded under force, coercion, undue influence and in complete confused state of mind. The Appellant furnished copy of the retraction affidavit to the AO during the assessment proceedings. It is noticed that the AO did not dispute the retraction affidavit of Shri. Gopu Rajagopal by subjecting the claim of the said person in the affidavit to verification through cross-examination of the said person.

**5.42** Moreover, Shri Gopu Rajagopal is a third party whose statement was sought to be relied on by the AO as adverse evidence against the Appellant. The said person therefore represents a witness of the department against the Appellant. Since the witness has retracted his statement and turned hostile, his statement can no longer be regarded as evidence against the Appellant. This is regardless of whether his retraction is considered valid or otherwise, for the purpose of assessment made in the hands of Shri Gopu Rajagopal based on the said statement. In the assessment order, the AO stated that since addition towards receipt of cash of Rs.14.80 crores has been made in the assessment of Shri Gopu Rajagopal, the corresponding cash payments have to be considered for addition in the hands of the three partners towards undisclosed investment u/s 69, in order to maintain consistency with the stand taken in the assessment of Shri Gopu Rajagopal. However, as mentioned above, the retraction of Shri Gopu Rajagopal stands on a different footing when considered in the context of assessment in his own case, since the statement recorded u/s 132(4) constitutes an important piece of evidence in the case of the person who was searched, in the course of which the statement of the said person was rendered. On the other hand, the implication of retraction of his sworn statement u/s 132(4) in the assessment of the Appellant and other two partners of M/s. SRS Mining is completely different, since the said statement constitutes statement of the third party who is a witness of the department against the Appellant. The retracted statement of such a witness cannot be held against the Appellant unless any other independent corroborative evidence is brought on record by the AO. In view of this reason, the action of the AO in making addition of unaccounted investment u/s 69 in the hands of the partners including the Appellant, merely for the sake of being consistent with the addition made in the assessment of Shri Gopu Rajagopal is not legally sustainable.

**5.43** Apart from the above, it is observed that the Appellant paid advances of Rs.25,00,000/- and Rs.2,29,20,000/- through cheques dated 09.04.2015 and 26.09.2015 respectively towards booking of the flat in the project being constructed by M/s.Kara Property Ventures LLP. The

aggregate amount of advances paid by the Appellant through cheques worked out to Rs. 2,54,20,000/- and the same is duly reflected in the return of income filed for AY 2016-17 under the head "loans and advances" in the name of M/s. Kara Property Ventures LLP. The Appellant informed the same to the AO during the course of assessment proceedings and furnished copy of the relevant ledger account in his books of account.

**5.44** Subsequent to the search, the Appellant requested M/s. Kara Property Ventures LLP for cancellation of the booking of the flat vide letter dated 18.06.2018. Based on the said request, M/s. Kara Property Ventures LLP vide letter dated 20.06.2018 addressed to the Appellant agreed for the cancellation of the booking. In the said letter, M/s. Kara Property Ventures LLP stated that it has received aggregate amount of Rs.2,54,20,000/- through cheques so far as against the agreed total consideration of Rs.12,81,45,500/- and that the same shall be refunded to the Appellant after deducting the service tax and TN VAT paid / payable in respect of the transaction. The Appellant submitted these facts along with the letter issued by M/s. Kara Property Ventures LLP confirming the cancellation of the booking to the AO during the course of the assessment proceedings. The said letter of M/s. Kara Property Ventures LLP furnished by the Appellant to the AO constitutes evidence in support of the Appellant's claim that no cash payments as found noted in the seized material were made towards advance for purchase of immovable property from M/s. Kara Property Ventures LLP. It is observed that the AO did not dispute the said evidence furnished by the Appellant in the assessment order. The AO did not bring any other evidence on record to discredit the evidence furnished by the Appellant. Hence, it is noticed that the AO has erroneously disregarded the evidence furnished by the Appellant without citing any reasons and without leading corroborative evidence in support of the inference sought to be drawn by him against the Appellant.

**5.45** On the basis of the discussion made in the preceding paragraphs, it can be seen that there is no evidence in the material seized from the office premises of M/s. SRS Mining that the cash payments allegedly made to Shri Gopu Rajagopal towards advance for purchase of immovable property have been made by the Appellant and the other two partners of M/s. SRS Mining from their own sources of income and no such nexus has been established by the AO through any corroborative evidence. It can be seen that the AO has wrongly placed reliance on the retracted statement of Shri Gopu Rajagopal in drawing the inference that the Appellant and the other two partners have made unaccounted investment in property by way of making advance payments in cash, though the said person, being a third party, is a witness of the

department and the retracted statement of a witness of the department cannot be held against the Appellant. Further, it can be seen that the AO has wrongly disregarded the evidence furnished by the Appellant by way of letter confirming the cancellation of booking of the flat issued by M/s. Kara Property Ventures LLP, which supported the claim of the Appellant that no advances were paid in cash, without disputing the said evidence and without bringing on record any corroborative evidence to establish the payment of cash advances by the Appellant. In view of these reasons, it is held that the addition towards unaccounted investment in purchase of immovable property made in the assessment orders for AYs 2016-17 and 2017-18, represented by the entries of cash payments made to Shri Gopu Rajagopal in the seized material, is not tenable on facts as there is no conclusive evidence to establish the same. Accordingly, the Ground of appeal No.2 for both the assessment years are treated as allowed. Therefore, the AO is hereby directed to delete the addition of Rs.1,10,00,000/- and Rs.3,83,33,330/- made in the assessment orders for AYs 2016-17 and 2017-18 towards unaccounted investment u/s 69 of the Act respectively.

6. Aggrieved by the order of the ld.CIT(A) the revenue preferred appeals before us. On the first issue of "addition of unaccounted partner's remuneration received from the SRS mining", the revenue argued that the Ld. CIT(A) erred in directing the assessing officer to delete the addition of Rs. 6,66,66,667/- made towards unaccounted receipt of partner's remuneration quantified on the basis of materials seized during the course of search. The ld.DR of the revenue further submitted that the Ld. CIT(A) failed to appreciate that the remuneration was received in cash by the assessee from the firm as evidenced by the materials seized in the office of the firm, which is required to be assessed in the hands of the assessee. It is furthermore submitted by the revenue that the Ld.CIT(A) held that the partner's remuneration to the extent which has not been allowed as deduction in the hands of firm as per the provisions of 40(b) of the Act is not liable to be included in the total income of the partners.

7. Per contra, it is the argument of the assessee that the loose sheet relied upon by the AO was neither found nor seized from the residence of the appellant or from the office

of the appellant. Further argument of the assessee is that without corroborative evidence available, the addition made by the AO on this account cannot be sustained. The assessee further advanced argument that the very same material was considered in the completed assessment of the firm and the same is pending adjudication before the Hon'ble Supreme Court against the remanding back /the setting aside of assessment order to AO by the Hon'ble jurisdictional High Court for fresh assessment. Further, the returns and statements of computation of income of the assessee also records that the appellant has admitted a sum of Rs.2,40,00,000/- and Rs.3,60,00,000/- towards remuneration to partners for AYs 2015-16 and 2016-17 as per the provisions of section 40(b)(ii) of the Act which is duly supported by the Partnership Deed. This is an undisputed fact that while finalizing the firm's accounts for the AYs 2015-16 and 2016-17, remuneration to the partners to the extent of Rs.7,20,00,000 and Rs.7,20,00,000/- respectively has been debited in the books. This is also reflected in the Profit& Loss Account of the partnership firm which is attached to the Return of Income furnished before the date of search. Out of this, Appellant had received Rs.2,40,00,000 and Rs.3,60,00,000/- and this has been admitted in the returns of income furnished AYs 2015-16 and 2016-17.The Appellant further apprised the fact that while finalizing the firm's accounts for AY 2017-18, no remuneration to the partners has been debited in the books. In fact, this is

reflected in the P & L Account of the partnership firm which is attached to the Return of Income furnished. Therefore, there is no justification to make further addition of Rs.28,33,33,3337/-, Rs.6,66,66,667 and Rs.16,50,00,000/- as salary received for AYs 2015-16 to 2017-18 respectively based on the loose sheet found and seized by the department without any other corroborative evidences other than written in the purported loose sheet.

It is further submitted by the ld. Counsel for the assessee that the addition made by the Assessing Officer is stated to be representing salary received by the Appellant from the partnership firm SRS Mining. Salary received / receivable by a person from the firm in which he is a partner is assessable as income in his hands as per section 28(v) of the Income-tax Act, 1961. Section 40(b) (v) imposes restrictions on the quantum of such salary which is allowable as deduction in the hands of the partnership firm and such restrictions are to be based on "book profits" of the relevant previous year. The term "Book profits" has been defined in Explanation 3 to section 40(b) (v) in the following words:

"For the purpose of this clause, "book profits" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit."

Therefore, it is submitted by the appellant that what is debited in the firm's books alone is taxable in the hands of the partners. The learned Assessing officer has not brought out on record or in the assessment order any concrete findings with documentary evidences that the Appellant had in fact received more salary than what had been admitted in the return of income, nor that the partnership firm had in fact paid anything more than what was debited in its accounts as salary to the partners. The modus of payment of such salary to the Appellant is also not established by the learned Assessing officer and the said amount is also not found or seized from the Appellant during the course of the search, nor any un disclosed investments reflecting the equaling amount was found by the department, the additions are made only on assumptions and doubt which cannot be upheld in a search and seizure assessment. The only evidence relied on by the Assessing Officer is a loose sheet of paper found and seized from a third party which also does not indicate that so much of amounts were paid as salary to the partners of the firm.

It is further submitted that even if the contents of the seized materials are assumed to be correct, the same cannot be considered to be taxable in the hands of the Appellant since the same is not eligible for deduction in the hands of the firm and hence it cannot be included in the income of the partners as per the proviso to section 28(v) of the Act which is re-produced below for easy reference:

Profits and gains of business or profession.

(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted;

In view of the above facts and considering the legal position as mandated under the provisions of the Act,the ld. Counsel for the assessee prayed that the additions so made as salary received amounting to Rs.28,33,33,3337/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- for AYs 2015-16 to 2017-18 respectively are to be declared as illegal and the same may be directed to be deleted and relief allowed to the Appellant. The ld. Counsel for the assessee also read out the ratios of judgment which has been referred by the ld. CIT(A). He further argued that the loose papers found in search are dumb documents and cannot be the sole basis for the addition.

8. We have heard the rival submissions on the "addition of unaccounted partner's remuneration received from the SRS mining". This issue hinges upon the loose sheets ANN/KGAR/MPKSSR/LS/S-1 and ANN/KGA/SRS-YS/LS/S. These purported seized loose sheets shows total remuneration paid to the three partners asRs.85,00,00,000/-, Rs.20,00,00,000/- and

Rs.49,50,00,000/- for AYs 2015-16 to 2017-18. The AO quantified the remuneration paid to the three partners and the share of each partner at 1/3rd of the total amount of remuneration as Rs.28,33,33,3337/-, Rs.6,66,66,667/- and Rs.16,50,00,000/- for AYs 2015-16 to 2017-18 respectively. We observe that the ld. CIT(A) in its para 5.14 noted as under:

> "the Appellant did not furnish any reasons backed by evidence in support of the said contention. As mentioned in the preceding paragraphs, the relevant loose sheets were found and seized from the office premises of M/s. SRS Mining. In view of the provisions of sec 132(4A) and 292C, the material seized from the premises of M/s. SRS Mining is required to be presumed to be belonging to M/s. SRS Mining and the burden is on the Appellant to rebut the said presumption. However, no evidence has been furnished by the Appellant for rebutting the said presumption. Hence, the contention of the Appellant that the seized loose sheets do not pertain to M/s. SRS Mining is held to be untenable. The contention of the Appellant that the seized loose sheets do not have any authenticity or reliability since they are not in the handwriting of any of the partners or employees of the firm and since they have not been verified and certified by any of the partners is also held to be unacceptable in view of the rebuttable presumption laid down in sec 132(4A) and 292C and in the absence

of furnishing of any evidence by the Appellant for rebutting the said presumption. The Ground No.4 for AY 2015-16 and Ground No.5 for AYs 2016-17 and 2017-18 dealing with this issue are therefore dismissed."

9. We find that the ld. CIT(A) is right to some extent in holding that the provisions of sec 132(4A) and 292C, the material seized from the premises of M/s. SRS Mining is required to be presumed to be belonging to M/s. SRS Mining and the burden is on the Appellant to rebut the said presumption. However, no evidence has been furnished by the Appellant for rebutting the said presumption. Hence, the contention of the Appellant that the seized loose sheets do not pertain to M/s. SRS Mining is held to be untenable. Therefore, on the facts of this case, we are also no convinced by the arguments of the assessee on loose papers as mentioned supra. Although, we have reservation on the issue of loose papers/dumb documents found in search u/s 132 of the Act.

10. Further, we have see this issue from another angle as discussed by the ld. CIT(A). What is the permissible limit for the remuneration to partners as per provisions of the Act? Section 40(b)(ii) and Section 28(v) of the Act are as under:

Section 28(v):

---

*any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:*

*Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted;*

40. Amounts not deductible:

*Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—*

*……..*

*…….*

*(b) in the case of any firm assessable as such,—*

*……..*

*(ii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorised by, or is not in accordance with, the terms of the partnership deed; or*

11. As per section 40(b)(ii) of the Income Tax Act, any remuneration paid by the firm to any of its partners which is not authorised by the partnership deed will not be allowed as a deduction. The conjoint reading of section 40(b) (ii) and Section 28(v) of the Act is that even if it is assumed that the appellant is in receipt of partner's remuneration as per the seized material, the same is not an allowable

deduction in the hands of the firm and consequently, the same cannot be included in the income of the partner in view of the proviso to section 28(v) of the Act. We further find that the returns and statements of computation of income of the assessee admits a sum of Rs.2,40,00,000/- and Rs.3,60,00,000/- towards remuneration to partners for AYs 2015-16 and 2016-17 as per the provisions of section 40(b)(ii) of the Act which is duly supported by the Partnership Deed. Further, in this case, we are of the considered opinion that the presumption of noting/contents mentioned in the loose sheets ANN/KGAR/MPKSSR/LS/S-1 and ANN/KGA/SRS-YS/LS/S is not available to the revenue in the light of the provisions of section 40(b)(ii) read with section 28(v) of the Act. Therefore, in the light of above facts, on the issue of "addition of unaccounted partner's remuneration received from the SRS mining", we do not intend to interfere in the order of the ld. CIT(A) hence, upheld the same.

12. On the second issue of "unaccounted investment in immovable property", the counsel for the revenue completely relied upon the order of the AO. The ld. Counsel for the assessee submitted that Shri Gopu Rajagopal, on 03.01.2017 has retracted his statement by filing affidavit. The ld. Counsel for the assessee pointed out that no payments in cash have been made by appellant and other two partners of M/s. SRS Mining over and above the payments made by them through cheques / bank transfer. The counsel for the Appellant stated that the assessee has

cancelled the booking of the flat subsequent to the search vide his requisition letter dated 18.06.2018 addressed to M/s.Kara Property Ventures LLP. He further stated that M/s.Kara Property Ventures LLP has accepted his request and issued a letter confirming the cancellation of the booking. In the said letter, M/s. Kara Property Ventures LLP has confirmed that the Appellant paid advance of Rs.2,54,20,000/- only through cheques as against the total consideration of Rs.12,81,45,000/-. The Appellant furthermore contended that the payment of cash by him towards purchase of the property has not been established with any corroborative evidence other than the statement of Shri Gopu Rajagopal which has already been retracted by him.

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. As per the decisions of the Hon'ble Apex Court in the cases of CBI Vs. VC Shukla & Others (1998) 3 SCC 410, Common Cause (A Registered Society) Vs. Union of India (2017) 77 taxmann.com 254 (SC) and Dhakeshwari Cotton Mills Lids. CIT (1954) 26 ITR 775 (SC) corroborative evidence is essential to support the evidence found in third party premise. In order to properly appreciate the issue, it is useful 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)". As evident from the decisions cited above, though it is true that the provisions of Evidence Act do not apply with the same rigor to the Income Tax proceedings, the AO is not entitled to make a pure guess and make an assessment

without reference to any evidence/material. It follows there from that addition cannot be made unless there is corroborative evidence to validate the entries found in the material seized from a third party. It is seen that in the cases of CBI v. VC Shukla & Others and Common Cause (A Registered Society) v. UOI (supra), it was held that it is an established legal principle that every transaction even when recorded in the regular books need to be independently corroborated and proved when some liability is to be fastened in respect of such transactions. This decision was rendered with reference to section 34 of the Indian Evidence Act. Though the technical rules of Evidence Act are not strictly applicable to Income Tax proceedings, the legal principle laid down by the Hon'ble Supreme Court in these cases that independent corroborative evidence is required in respect of entries in regular books of account when a liability is sought to be fastened based on such entries would be broadly applicable to Income tax proceedings also in cases where tax liability is sought to be fastened on an assessee based on entries found in the notebooks/loose sheets seized from a third party. In the case of the Appellant, addition was made in the assessment order for the AY 2017-18 on the basis of the entries found in material seized from a third party. When the tax liability was sought to be fastened on the Appellant based on the said seized material, the AO was duty bound to prove the correctness of the entries in the seized material with independent corroborative evidence. However, it is noticed that no such

corroborative or cogent evidence has been brought on record and relied upon by the AO in the assessment order. It is also relevant to point out that ITAT, Bangalore held in the case of ACIT Vs. Shri B. S. Yediyurappa in ITA No. 14/Bang/2019 vide order dated 07.04.2022 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 is not sustainable in the absence of any evidence to corroborate the noting in the seized material. The said decision is squarely applicable to the facts of the present case. The relevant portion of the decision of the Tribunal is extracted as under: "18. The payments are within the knowledge of the person, who written it. However, the said person denied the payment in the cross-examination and finally there is no evidence to suggest as to what they stand for and whom they referred to. Since the seized material is neither the regular books of account nor kept in the regular course of business of the assessee. They were not sufficient enough to fasten the liability on the present assessee, against whom they were sought to be used. The seized document collected by the department did not raise a reasonable ground to believe that there is a valid payment to the present assessee so as to award contract to the KNNL and the payment is relating to for awarding the contract of UBP. The seized material itself would not

furnished evidences of the truth of their contents and that was not corroborated by any further evidence so as to hold that the assessee has actually received the said payment. In view of this, we are of the opinion that the order of the earlier Bench in the cases of Shri D.S.Suresh Vs ACIT in ITA Nox462 & 463/Bang/2020 (AYS 2009-10 & 2011-12), dt 22.02.2021 and Shri D.V.Sadananda Gowda Vs ACIT in ITA No.895/Bang/2019 (AY 2011-12). dt. 30.03.2021, are squarely applicable to the present facts of the case and accordingly in view of the above discussion, we confirm the deletion of the addition made by the CIT(A). Hence, the grounds raised by the Revenue are dismissed". As already discussed in detail in the preceding paragraphs, the seized material is in the nature of a flawed document which does not contain complete and unambiguous information to arrive at any conclusion based solely on the said material that the Appellant was in receipt of the payments found noted therein. 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. In view of these reasons, it is required to be considered that the AO has not discharged the onus cast on the revenue to prove that the Appellant had actually paid as reflected in the seized material with reliable and cogent independent evidences to corroborate the entries in the seized material.

During the course of hearing before us, the Appellant has relied upon the various decisions of the jurisdictional

tribunal which are applicable to the facts and circumstances to the case of the Appellants.

The following are the decisions that are relied upon:-

i. DCIT Central Circle-2(4) Chennai vs. O Pannerselvam in ITA No. 581 & 582/Chny/2023 dated 05.04.2024
ii. DCIT Central Circle-2(2) Chennai vs Karuppagounder Palaniswami in ITA No. 125, 126, 127 and 213, 214, 215 / Chny/2023 dated 03.04.2024
iii. DCIT Central Circle-2(4) Chennai vs Vaithialingam in ITA No. 604,605,606/chny/2023 dated03.04.2024
iv. DCIT Central Circle-2(4) Chennai vs Vivek papisetty in ITA No. 211, 212 and 405/Chny/2023 dated 02.04.2024
v. DCIT Central Circle-2(4) Chennai vs P Ram Mohan Rao in ITA No. 223,224,225/Chny dated 02.04.2024.

In all the above cases, we find that the AO made addition(s) on the basis of the seized material that was found and seized from M/s. SRS Mining. The Revenue appeals in all the above cases were dismissed by the Tribunal upholding the order of the Commissioner of Income Tax (Appeals). We also observe that the payment of cash by him towards purchase of the property has not been established

with any corroborative evidence other than the statement of Shri Gopu Rajagopal which has already been retracted by him. We also note that the assessee has cancelled the booking of the flat subsequent to the search vide his requisition letter dated 18.06.2018 addressed to M/s.Kara Property Ventures LLP. In fact, M/s.Kara Property Ventures LLP has accepted his request and issued a letter confirming the cancellation of the booking. In these cases, the AO miserably failed to show that the said amount emanates from the coffers of the appellant. Hence, in the background of the above judicial decisions(s) brought out supra, we are of the considered view that the action of the A.O. in making the addition, without bringing corroborative evidence is not legally and factually sustainable. In a similar situation the Banglore Bench of Tribunal in the case of Carpenters Classics (Exim) P. Ltd. Vs DCIT [2008] 299 ITR (AT) 124 has reviewed the case law on the subject and found that a retraction statement has to be considered in the light of all relevant facts. We also find that the ld. CIT(A) has meticulously gone through the seized materials, loose papers, retraction etc. and given the cogent findings. Hence, we are not inclined to interfere in the order of the ld.CIT(A) on this issue. Accordingly, all the nine appeals of the revenue are dismissed.

13. In result, all nine appeals of the revenue are dismissed.

Order pronounced in the open court on 30th April, 2025

| | |
|---|---|
| Sd/- | Sd/- |
| (**जगदीश**) | **( मनु कुमार गिरि )** |
| ( Jagadish ) | ( Manu Kumar Giri) |
| **लेखा सदस्य** / Accountant Member | **न्यायिक सदस्य**/ Judicial Member |

चेन्नई/Chennai,
दिनांक/Date: 30.04.2025
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त/CIT Chennai/Madurai/ Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.