

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

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

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

आयकर अपील सं./ITA Nos.3188 to 3192/Chny/2024
निर्धारणवर्ष/Assessment Years: 2015-16, 2016-17, 2017-18, 2019-20 &
2020-21
&
Cross-Objection Nos.22 to 26/Chny/2025
निर्धारणवर्ष/Assessment Years: 2015-16, 2016-17, 2017-18, 2019-20 &
2020-21

The ACIT, Central Circle-2(2), Chennai.	v.	Kasthoori Raja Dhanush, Old No.16/5, New No.33/5, Rajamannar Street, Thyagaraya Nagar, Chennai-600 017.
		[PAN: ACTPV 0618 E]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
Department by	:	Mrs. Sheila Parthasarthy, CIT
Assessee by	:	Mr. N. Arjun Raj, Advocate
सुनवाईकीतारीख/Date of Hearing	:	28.04.2025
घोषणाकीतारीख /Date of Pronouncement	:	30.06.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 19, Chennai (hereinafter referred to as 'Ld.CIT(A) ') all dated 17.10.2024 for the Assessment Years (hereinafter in short 'AY') 2015-16, 2016-17, 2017-18, 2019-20 & 2020-21 and Cross-Objections (CO) filed by the assessee for



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AYs 2015-16, 2016-17, 2017-18, 2019-20 & 2020-21. Since the issues involved are common, all the appeals & CO's for all the assessment years were heard together. Both the parties also argued them together raising similar arguments on these issues. Accordingly, for the sake of convenience and brevity, we dispose all the appeals by this consolidated order.

2. The main issue permeating in all these appeals/Cross-Objections are concerning to addition(s) made by the AO in the hands of the assessee based on material seized from the premises of third party i.e., Shri G.N. Anbu chezhian [in short 'Anbu'], who was *inter alia* found to be a financier in the cinema industry.

3. Before advertent to the grounds raised by the Revenue, we first consider it fit to cull out the basic facts of the case in respect of the AYs before us. Search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted against Shri Anbu on 05-02-2020. The AO is found to have recorded a satisfaction note dated 30-08-2022 stating that, he was satisfied as per the Annexure attached to the note that, incriminating material found was 'belonging to' the assessee and had a bearing on his total income. The relevant portion is reproduced hereunder:- -



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7.	Satisfaction of the Assessing Officer of the person referred in Section 15A that the seized material referred in SI No. 5 with the person referred to in S.No.4	I am satisfied that the incriminating material seized as per Annexures above belong to Shri K.R. Dhanush and have a bearing on the determination of the total income of Shri K R Dhanush
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4. However, in the Annexure appended to the satisfaction note, the AO is noted to have observed that the relevant seized material *pertained* to the assessee and had a bearing on his total income for AYs 2014-15 to 2020-21. The relevant Annexure is extracted below: -

"A search and seizure operation was conducted in the case of Shri G N Anbuezhian and others on 05.02.2020. During the search proceedings, various incriminating material being loose sheet, Book & Documents and Electronic devices were seized.

On examination of incriminating material seized vide annexure no.ANN/PP/RA/LS/S-30 from Shri. Aravindan Ramalingam at No. AA-35, 3rd Street, Anna Nagar, Chennai 600 040 and loose sheet seized vide annexure no. ANN/KM/GNA-YOG/LS/S-56 & 59 from Shagun Villa, No.12, Yogambal Street, Flat No.4, 1*^t Floor,T. Nagar, Chennai -17, it was seen that Shri. G. N. Anbuezhian has entered into various cash transaction being cash loan with Shri. K. R. Dhanush. Further, Shri. K.R. Dhanush has repaid the cash loan alongwith interest. Prima facie cash transaction entered into is in violation of provisions of Income-tax Act, 1961 and attracts penalty u/s 271D/271E of the Income -tax Act, 1961. Further, source of repayment of cash loan along with interest needs verification.

In view of the above, I am satisfied that the above seized material **pertains to** Shri. K. R. Dhanush, other than the person referred to in Section 153A, jurisdiction of which vests with me.

On being satisfied that the above seized materials vide ANN/PP/RA/LS/S-30 and ANN/KM/GNA-YOG/LS/5-56 & 59 **pertains to** Shri. K. R. Dhanush, **which have a bearing on the determination of the total income of Shri. K. R. Dhanush, for the A.Y. 2014-15 to A.Y.2020-21**, in accordance with the provisions of Income-tax Act,



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1961, it is a fit case for issue of notice u/s 153C is issued for A.Y. 2014-15 to 2020-21.

5. It is observed from the above note that, according to AO of the searched person, the material ID marked ANN/PP/RA/LS/S-30 seized from the premises of Shri A Ramalingam [associate of Shri Anbu] and material ID marked ANN/KM/GNA-YOG/LS/S-56 seized from the premises of Shri Anbu revealed that, Shri Anbu had various cash loan transactions with the assessee, and that the assessee had repaid these cash loans along with interest. These entries so found, according to the AO, attracted penal consequence u/s.271D/271E of the Act and that the source of repayment also required verification. Though the specific assessment year to which the relevant entries pertained to, quantum of entries pertaining to the assessee, value of alleged cash loan transactions etc., were not specified in the satisfaction note, the AO is found to have recorded a common satisfaction note for AYs 2014-15 to 2020-21 that, the aforesaid seized material had a bearing on assessee's total income for all these AYs. According to the AO of the assessee (*who was the same as the AO of searched person*), ordinarily having regard to the date of search i.e. 25-02-2020, he was within his jurisdiction to issue notices u/s.153C of the Act in respect of six assessment years preceding the assessment year of search i.e. the year in which the original search took place (AY 2020-21). The AO accordingly issued notices u/s. 153C of the Act reopening six



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preceding assessment years preceding the searched assessment year and those AY's were AYs 2014-15 to 2019-20 and the AO also reopened the AY 2020-21 u/s.153C(2) of the Act. Post the issue of notice u/s 153C of the Act, the AO is noted to have completed the income-tax assessments u/s.153C/143(3) of the Act by orders dated 31.03.2022 for the AYs 2015-16 to 2020-21, in which he made addition(s) on account of repayment of loans to Shri Anbu found mentioned in the impugned material seized from the latter's premises, by way of unexplained monies u/s 69A of the Act.

6. It is noted that the reasoning given by the AO for making the addition(s) by way of unexplained monies u/s 69A is same across all the AYs impugned before us. Both the parties have also argued these appeals together. Hence, with the consent of both the parties, and to avoid repetition of facts; we take up AY 2015-16 to be the lead case, whose result shall apply *mutatis mutandis* to AYs 2015-16, 2016-17, 2017-18, 2019-20 & 2020-21 as well.

7. Briefly stated, the facts relating to the impugned dispute is that, in the course of search upon Shri Anbu, certain loose papers inter alia ID marked ANN/KM/GNA-YOG/LS/S-56 was found & seized from his premises and loose papers document ID marked ANN/PP/RA/LS/S-30 from the premises of his associate, Shri A Ramalingam. The copies of these loose sheets have been provided by the Revenue in their paper-



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book at Pages 3 to 81A. Since these loose sheets were in vernacular language, the corresponding English translated copy has been provided as well. It is observed that, the loose sheets contain several scribblings of numerous entries/names along with amounts mentioned therein which appears to be a statement of receipts and payments. It is observed that, Shri A Ramalingam in his statement u/s.132(4) of the Act, for Q. No. 10 is noted to have submitted that, he is unaware about the contents of the seized material ID marked ANN/PP/RA/LS/S-30 and that he was only holding it in custody for Shri Anbu. It is noticed that Shri Anbu in his statement recorded u/s 132(4) of the Act had made a general assertion that he was *inter alia* involved in providing finance to producers in cinema industry out of his film distribution income. When, Shri Anbu was confronted with the seized material ID marked ANN/PP/RA/LS/S-30 found from the premises of Shri A Ramalingam, in his Answer to Q no. 48, he is noted to only confirm that, these material belonged to him and that, they were obtained during the course of film financing whose details are included in seized material ID marked ANN/KM/GNA-YOG/B&D/S1 to S40. Later on, in post search enquiries, the statement of Shri Anbu was again recorded u/s.131 of the Act dated 21-12-2020 in which specific questions were posed regarding the material seized from the premises of Shri Aravindhyan, and his answers are noted to be as follows: -



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"Q No. 11 It means the documents which are kept in safe custody of Shri Aravindan is so important for you. Please state what is the content of those documents.

Ans: The film distribution agreements, documents relating to loan given to various parties are kept in the safe custody of Shri Aravindhan.

Q No. 12 Please elaborate about the loan details as mentioned by you.

Whenever I give loan to parties, I get the signatures from those parties in stamp paper and letterheads mentioning the amount of loan given on that date along the outstanding loan on that date. I receive film distribution rights as collateral from few parties.

Q No. 13 As you stated above the documents relating of loan given were kept in the safe custody of Shri Aravindan. On analysis of the loan details advanced by you, most of the loan transactions were not reflected in any of the bank accounts maintained by you. It shows you advanced the loan mainly in cash. Please offer your explanation.

Ans: Yes sir I accept there are cash transactions in my business. Also I get signatures my parties in any amount I wish. The documents include the actual cash loan given and also the documents in which I got signatures for my own safety as many parties are not returning the cash loans given by me."

8. According to Shri Anbu, the details contained in these materials related to loans given to several parties, but he didn't mention any specific names of any persons. He also admitted that, they were notings of certain cash transactions in his loan business and that, he would obtain signatures of parties for cash loans provided, or some confirmations on their letterhead/stamp papers or collaterals from them, when he would advance cash loans.

9. It is noted that, the seized documents ID marked ANN/PP/RA/LS/S-30 & ANN/KM/GNA-YOG/LS/S-56 *inter alia* contained certain notings of amounts against the name 'Dhanush'. The AO is noted to have tabulated



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the details of this name and corresponding amounts in the assessment order. According to AO, these loose sheets actually constituted daily cash book of Shri Anbu wherein he meticulously recorded all his daily cash transactions. The AO held that, the notings tabulated by him pertained to the assessee because of the commonality of name. The AO was of the view that, the entries in these seized materials related to loans advanced by Shri Anbu to people belonging to Tamil Nadu Cinema industry and as the assessee was also a part of the same industry, these notings in the name of 'Dhanush' pertained to him. The AO accordingly held that, the assessee had availed cash loan from Shri Anbu which was repaid to the tune of Rs.5,08,55,000/- in AY 2015-16 and proposed to add the same by way of unexplained monies u/s 69A of the Act. It is observed that, the assessee had objected to the same and contended that mere notings found in loose papers from third party premises cannot be used against him, in absence of any tangible material to corroborate the same. The AO however is found to have rejected the submissions put forth by the assessee by observing as under: -

"3.3.5 The assessee's contentions were duly considered and are not acceptable for the following reasons:

- 1) The denial of any transactions with Shri. G. N. Anbuchezhian is vague and not backed by any logic or evidences.
- ii) Moreover, his name has appeared along with the names of people belonging to the Tamilnadu Cinema Industry of the same period, which strengthens the argument about the person being referred to in the



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seized material. Hence, it is unmistakably concluded that the information is related to the assessee only.

(iii) From the nature of entries in the seized materials and the explanation furnished by the author of the seized materials it is clear that the assessee has availed cash loan from Shri. G. N. Anbuchezhian and repayment of loan to the tune of Rs. 5,08,55,000/- in cash has been made during F.Y.2014-15 relevant to A.Y.2015-16.

(iv) From the incriminating material seized from G. N. Anbuchezhian, it can be observed that the receipts have been recorded on the right-hand side and the expenditures have been recorded on the left-hand side of the notebook. It can also be observed therein that the total debit, credit balance and cash in hand has been arrived at the end of the each page. This strengthens the authenticity and legitimacy of the data contained in seized daily cash book of the financier, G.N.Anbuchezhian. Hence, it is evident that the impugned seized material i.e. daily cash book of G.N. Anbuchezhian is not only self-explanatory and possesses all the attributes to be reckoned as primary evidence.

(v) From the above facts, it can be seen that the receipts and payments have been recorded on day to day basis in the seized material meticulously. The day-wise/page-wise total was also found therein. In view of the above, the incriminating material seized from G. N. Anbuchezhian satisfies the meaning of "book of account" as per the provisions of Sec. 34 of the Evidence Act, 1872. The Hon'ble Supreme Court in the Case of Chuharmal Vs CIT (1988) 38 Taxmann 190 (Supreme Court) has held that, whenever a need arises, the tax authorities can invoke the provisions of the Evidence Act. On the basis of the above, the decision relied on by the assessee in the case cited above is not applicable to the facts and circumstances of his case.

(vi) The decision of the Hon'ble Supreme Court in the case of Common Cause (A Registered Society) Vs. Union of India (394 ITR 220) is distinguishable in the case of the assessee, for the simple reason that the evidences found were not simple loose sheets or arbitrary notings. The entries found in the seized materials were in the form of proper accounts, maintained systematically, on daily basis. The entries have been logically explained by the author of the entries, during the course of search. Hence, inferences are drawn not on the basis of surmises but on the basis of evidences and the explanations furnished.

Further, the case laws relied upon by the assessee is distinguishable from the fact that it relates to criminal proceedings not any way connected to Income-tax Proceedings.



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In this connection, it is held that the case referred to relates to the case registered under the Prevention of Corruption Act. Being a criminal case, the evidentiary value in such cases requires to be proved beyond reasonable doubt. In the assessee's case, being a case of civil nature, proving preponderance of the probabilities is sufficient. The various principles laid down in the above cited case law cannot be applied in toto to income tax proceedings as the decision was rendered under the Prevention of Corruption Act."

10. The AO accordingly held that, due to the nature of entries and its explanation as given by Shri Anbu before ITSC [interim settlement commission] and based on the hypothesis of preponderance of probabilities, the assessee is understood to have entered into cash loan transactions with Shri Anbu and thus made addition of Rs.5,08,55,000/- by way of unexplained monies u/s 69A of the Act towards repayment of these cash loans in AY 2015-16.

11. Aggrieved by the order of the AO, the assessee preferred appeal before the Ld.CIT(A) who is noted to have held that the notice(s) were issued u/s.153C of the Act without a valid satisfaction note and without any incriminating material as mandated in provisions of Section 153C and thus held that, the AO lacked jurisdiction to validly initiate proceedings u/s 153C of the Act, and accordingly quashed the assessment order(s). On merits also, the Ld. CIT(A) held the addition to be unsustainable by observing as under: -

"6.4.9 The undersigned has carefully examined the issue under consideration. A search u/s 132 of the act was carried out in the case Shri G. N. Anbuezhian and others on 05.02.2020. During the course of



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search, certain loose sheets maintained by Shri G. N. Anbuchezhian (who happens to be the author of the narrations made therein), the various transactions entered with various persons / parties , one among them is the appellant. As per the seized material it was found that the appellant has repaid loan taken from Shri G. N. Anbuchezhian during the various financial years under consideration by way of cash including interest.

6.4.10 As evident in the assessment order, other than the loose sheets seized, there exists no other evidence corroborating the appellant has repaid such loans taken. In this regard the appellant has made a detailed submission upon this issue which is reproduced here as under.

"It is submitted that no consequential search, survey or other investigation was carried out in the hands of the Appellant and also no statement was recorded by the AO by way issue of summons for recording of a statement etc. The Appellant submits that all Cine Financiers who advance huge loans in crores, have the inevitable practice of taking securities such as pro notes, property documents etc, from the borrowers. In the Appellant's case' except for the seized loose sheets, the Assessing Officer found and seized no other documents as relating to the alleged transactions in the loose sheets. This itself would go to prove that no such cash advances were either received or paid back."

6.4.11 It is an undisputed fact that the documents seized from third party premises may have a bearing upon the person from whom such materials were seized. In the event, if it were to truly possess a guaranteed proof in respect of other person, **the Authorized Officers who undertook the search would have examined the Appellant and a deposition to such effect would have been obtained from the appellant.** When this exercise has been omitted to be undertaken, it clearly illustrates that the addition was made on suspicion. As brought out by the appellant, when a huge loan is taken that too in crores, Obviously the lender would have taken securities such as pro notes, property documents etc, from the borrowers. The search team **have not** come across such **corroborative evidences** to conclusively prove that the appellant has borrowed funds and repaid it with interest.

6.4.12 The appellant during the course of assessment proceedings, in response to the show cause notice issued has completely denied the alleged cash transactions and has produced before the AO, books of accounts, bank statements etc and the AO has not made any findings upon it. In this scenario the question to be answered is whether the AO is right in making the addition on the basis of the noting / narration



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found in the loose sheet which was seized from a third party premise. It is found appropriate to highlight that the benefit of presumption u/s 292C of the Act is only with reference to the person searched and it cannot be extended to any other person other than the person searched like that of the Appellant. Therefore, the contents of the loose sheets may possess value based on presumption u/s 292C of the Act, in the case of the searched person and by no stretch of imagination, does the same can be applied to facts and case of the Appellant.

6.4.13 It is a well-established legal principle that a loose sheet found and seized from a third-party premises, without any corroborating evidence or material on record, and without a finding that such document has translated into actual transactions resulting in undisclosed income for the appellant, cannot be relied upon for the purpose of assessments made pursuant to a Search and Seizure action.

6.4.14 It is appropriate to bring on record the observations of Apex court in the case of **K.P. Varghese 131 ITR 597** where in it has been held that "*It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue. To throw the burden of showing that there is no understatement of the 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 that declared by him*".

6.4.15 Further, that the burden is on the Revenue to prove that the income sought to be taxed is within the taxing provisions and there was in fact income, are propositions which are well settled by the Supreme Court in the case of **ParimisettiSeetharamamma v. CIT [1965] 57 ITR 532** which reiterates these propositions. *This is very important burden and must be discharged by revenue strictly. There should not be reverse burden on tax payer to prove thenegative.*

6.4.16 Although the burden of proof is not static, in assessment proceedings—especially in search-related cases—the initial onus lies on the appellant. In this case, the appellant has discharged that initial burden by submitting that he has not availed any cash loans and repaid the same by way of cash. Presumptions requiring rebuttal were once drawn, there is no discretion vested in the AO to reject the appellant's claim once this initial burden has been met. As evident in the assessment order, the AO has not chosen to examine the assessee u/s 131 of the Act and cross verify the findings of the search.



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6.4.17 It is significant that the Investigation Officer has also failed to cross verify the findings of the search with the appellant. The appellant came to know about the findings of the search only when the notice u/s 153C of the Act was served upon him. The appellant took cognizance of the facts only upon the receipt of the show cause notice from the AO. The AO has merely acted based on the documents seized, and has not made any efforts to bring on record any independent/corroborative evidence to show that the alleged re-payments were actually made, before jumping into any conclusion. In particular the AO has failed to ascertain the amounts availed as loan so as to repay the same along with interest. In the absence of any such details, considering the repayment alone can only be a presumption. Further, the AO has observed in the assessment order that "*source of repayment of cash loan along with interest needed verification*" Para 3.1 of the assessment order. As evident in the assessment order, no such verification has been carried out.

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

6.4.19 A narration made in a loose sheet by a third person with scant details cannot be used to fasten tax liability upon the person. In the absence of any corroborative evidence to attribute the entries to such a person. Such seized material is liable to be treated as unsubstantiated, unsupported or unverified document, which does not have any evidentiary value in respect of the entries found therein, unless corroborative evidence is available which can provide necessary



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reliable basis for deciphering that the narration contained in the seized material have actually taken place.

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

"For the sake of argument if we accept the submission of the learned Departmental Representative that the learned CIT(A) erred in accepting fresh evidence then what is left after ignoring those affidavits is the bare document No. 7 with the bare details as referred to above. The moot question now arises is whether any addition can be made on the basis of that document. We have already pointed out above that this document is bereft of necessary details about year of transaction, ownership of transaction, nature of transaction, necessary code for deciphering the figures. It may be possible that a document may not be complete in all respects as the businessmen or tax evaders may choose to record minimum details on a document and keep the rest in their memory. It is the duty of the AO to carry out necessary investigations by correlating the impugned document with other documents seized, with regular books of account, with record kept by outside agencies, such as banks or financial institutions or debtors/creditors and finally, by recording the statements of concerned parties so as to fill up the gaps in confirming the inference arising from the documents for a proper charge of tax. Such correlation is necessary unless the document is capable of speaking giving full details so as to enable any intelligent person to find out the nature of transaction, the year of transaction, the ownership of the transaction and quantum thereof. Even in that situation, it is necessary to give opportunity to the assessee to offer his explanation and investigation be carried out to strengthen the direct inference arising from this document."

6.4.21 The proposition that addition cannot be made merely on the basis of entries in loose sheets found in the premises of a third party without bringing on record independent evidence to corroborate such entries has been reiterated in several decisions. Some of the decisions to this effect are **MM Financiers (P) Ltd Vs. DCIT (2007) 107 TTJ (Chennai) 200, Regency Mahavir Properties Vs ACIT [2018] 169 ITD 35 (ITAT-Mumbai), ACIT Vs. Katrina Rosemary Turcotte [2017] 190 TTJ 681 (ITAT-Mumbai), DCIT Vs. Vipin Aggarwal [2017] 83 taxmann.com 6 (ITAT Chandigarh), S.P Goyal Vs DCIT**



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[2002] 82 ITD 85 (TM) ITAT, T.S Venkatesan Vs ACIT [2000] 74 ITD 298 (Cal) and Monga Metals (P) Ltd Vs ACTT [2000] 67 TTJ 247 (All).

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

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

6.4.23 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



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Apex Court in the case of **Dakeswari Cotton Mills Ltd Vs. CIT (1954)**
26ITR 775 (SC):

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

6.4.24 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, but the AO is not entitled to make a pure guess and make an assessment without reference to any evidence/material. It follows therefrom that addition cannot be made unless there is corroborative evidence to validate the entries found in the material seized from a third party.

6.4.25 As discussed supra, the seized material relied upon by the AO primarily is the narrations contained in the loose sheets. The AO cannot arrive at any conclusion solely on the basis of this loose sheet that the Appellant have actually repaid loan(s) availed by way of cash. When there is no corroborative evidence to prove that the payments noted in the seized material have actually materialized and transfer of money has actually taken place between the concerned parties. **There exists no case for the AO to make any addition on the basis of such entries found in the seized loose sheets** and therefore the addition(s) made on the basis of the entries found in the loose sheets for the years under consideration is **unsustainable.**"

12. Being aggrieved by the Ld. CIT(A)'s action, the Revenue is now in appeal before us. The assessee is found to have filed cross objections supporting the order of Ld. CIT(A) and raised additional objections to the validity of assessment framed u/s 153C of the Act for the impugned year.



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13. Assailing the action of Ld. CIT(A), the Ld. CIT, DR, Smt. Sheila Parthasarthy, first argued that, the proceedings initiated u/s.153C of the Act by way of a common satisfaction note dated 30.8.2022 was valid in as much as it contained sufficient reference to the incriminating material found in the course of search. For this, the Ld. CIT, DR relied on the decision of Hon'ble Delhi High Court in the case of **Indian National Congress vs. DCIT (463 ITR 431)**. The Ld. CIT, DR further submitted that, the proceedings u/s 153C have been validly initiated for the preceding six assessment years *viz.*, AYs 2014-15 to AY 2020-21, by taking the reference date of search to be 05-02-2020, in light of the amendment brought in Section 153C by Finance Act, 2017. The Ld. CIT, DR referred to CBDT Circular No. 24/2015 dated 30.12.2015 to support the validity of single common satisfaction note recorded by the AO, as the AO for both the 'Searched Person' and the 'Other Person' was the same.

14. Agitating on merits, the Ld. CIT, DR submitted that, the impugned seized material were not just loose sheets or vague dumb documents but clear books of accounts showing the cash loan transactions of the searched person, Shri Anbu with various parties, and the assessee, Dhanush, being one of them. According to her therefore, the findings rendered by the Ld. CIT(A) holding these notings to be unreliable, was untenable. He further took us through the statements of Shri Anbu, which



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was found placed at **Pages 13 to 102 of Paper book**, to show that, he had admitted that the seized materials reflected the cash transactions of his business which are not offered for tax and hence, if seen in his perspective, it does suggest that, he had advanced cash loans to the assessee. The Ld. CIT, DR filed before us additional evidence in form of the ledgers, later on prepared and furnished by Shri Anbu, in his reply to Rule 9 report, in his matters before the ITSC, copies of which were placed at **Pages 213 to 304 of Paper Book-I**, to show that these ledgers contained name of the assessee which evidenced the assessee's cash loan transactions with Shri Anbu. The Ld. CIT, DR also relied upon the order of ITSC wherein Shri Anbu had offered substantial income from such cash loan business. He accordingly urged that the order of the Ld. CIT(A) ought to be reversed and the AO's order be restored.

15. Per contra, the Ld. Counsel for the assessee, Shri Arjun Raj, supported the order of the Ld. CIT(A). On the validity of the impugned proceedings u/s 153C of the Act, he first submitted that, the contents of the common satisfaction note was general and vague and that it didn't meet the criteria laid down by Hon'ble Supreme Court in the case of **CIT v. Singhad Technical Education Society (250 Taxman 225)**. He pointed out that, the AO in his main satisfaction note had stated that the seized material "belonged" to the assessee which was factually erroneous



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and that later on he had changed his tact and alleged that it only "pertained" to the assessee. He further contended that, though AY 2014-15 was reopened u/s 153C through this common satisfaction note but the purported seized material didn't admittedly contain anything adverse against the assessee due to which no addition was made in that AY, which according to him, showed that, the satisfaction note was recorded without application of mind. He further pointed that, the reference to the seized material was broad and sweeping and that no specific dates or amounts of transaction was mentioned in the satisfaction note which were identified to be pertaining to the assessee and thus according to him, the Ld. CIT(A) had rightly held that the satisfaction note to be in violation of the condition precedent for invoking powers u/s 153C of the Act.

16. Shri Arjun Raj further urged that, AYs 2015-16 to 2016-17 were actually 7th and 8th year preceding the date of search and that, the AO had not validly invoked the powers under fourth proviso to Section 153A read with Section 153C of the Act to cover the extended period. According to the Ld. AR, the reference to date of search, for the purposes of Section 153C, ought to be the date of handing over of the seized documents or recording of satisfaction note i.e. 30-08-2022 and not the original date of search i.e., 05-02-2020; for the purposes of Section 153C of the Act, even after considering the amendment made by the Finance Act, 2017.



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The Ld. AR relied upon the decision rendered by the Hon'ble Delhi High Court in the case of **PCIT v. Ojjus Medicare (P) Ltd. (465 ITR 101)** and this Tribunal in the case of **M/s KSJ Infrastructure Pvt Ltd Vs DCIT (ITA Nos. 797 & 798/Chny/2024)** in support of his contention. The Ld. AR further submitted that, there was no mention of any income in form of 'asset' in the satisfaction note which had escaped assessment in AYs 2015-16 to 2016-17 and, thus he argued that, the impugned action of reopening the assessment for AYs 2015-16 & 2016-17 u/s 153C of the Act was based on wrong assumption of jurisdictional fact and hence, the consequent impugned order, was bad in law for want of jurisdiction.

17. On merits, supporting the order of Ld. CIT(A), the Ld. AR, Shri Arjun Raj contended that, the veracity of the entries found in the loose sheets were never tested by the AO independently before concluding the assessment proceedings and the additions were solely based on the scribbles found in the loose sheets which did not have any evidentiary value. He pointed out that, the fact that the AO himself had acknowledged that the addition was based on hypothesis of preponderance of probabilities derived from the thirdparty material, shows that the impugned addition was made only on speculation. Taking us through the statements of Shri Anbu, he showed that, he was never confronted with the impugned entries nor did he specifically incriminate the assessee and



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thus it was unsafe to take the assumption made by the AO that the scribblings under the nomenclature "Dhanush" pertained to the assessee alone.

18. Thereafter, the Ld. AR, Shri Arjun Raj vehemently objected to the additional evidences furnished by the Ld. CIT, DR in form of ledgers which were later on prepared and submitted by Shri Anbu before ITSC. He further submitted that the subsequent ledgers which were manufactured by Shri Anbu for the ITSC cannot be equated as an admissible seized material found in the course of search qua the assessee. He also contended that, the authenticity and understanding of the entries in the ledger extracts has to be examined from the searched person's perspective, and the settlement of dispute before the interim board of settlement by the searched person would not automatically implicate the respondent assessee especially in view of the fact that the quantification of income in the hands of the searched person during the settlement proceedings didn't establish/confirm the identity of the recipient of such sum, as the income had been quantified on an estimated basis. According to him, Shri Anbu with a view to achieve quietus to the income tax proceedings may have quantified certain sum based on unreliable documents as his own undisclosed income, but his surrender which did not specifically identify the assessee and was also not backed by evidence



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or confirmation from the assessee, cannot be considered as valid basis for justifying addition in the hands of the assessee. The Ld. AR reiterated before us that, the impugned third party seized material lacked evidentiary value and thus the order of the Ld. CIT(A) deleting the addition doesn't warrant any interference.

19. The Ld. CIT, DR, Smt. Sheila Parthasarthy, in her rejoinder submitted that, AYs 2015-16 to 2016-17 were within the period of six assessment years and that the reference date was to be taken as original date of search i.e. 05-02-2020. In this regard, she relied on the decision of **CIT v. Jasjit Singh [2023] SCC Online SC 1265**. In so far as admissibility of the additional evidences is concerned, she contended that, this Tribunal being the last fact finding authority ought to admit the same as it has a decisive bearing on the impugned issue. She further pointed out that, M/s.Wunderbar Films P Ltd in which the assessee was a shareholder and Director had availed loans from the entities belonging to Shri Anbu through banking channel which was also found noted in his name 'Dhanush' in the said loose sheets and thus, according to her, this supported the AO's case that, all other entries also pertained to the assessee. According to the Ld. CIT, DR, if the assessee wanted to contend that, then the entries in seized material did not pertain to him but the company, then the onus lies on the assessee to demonstrate that both



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the cash and bank entries have been offered in the hands of the company. Upon conclusion of the hearing, both the parties furnished written submissions summarizing their arguments, which have been taken on record.

20. Having heard both the parties and after going through their written submissions and the material placed before us, we are inclined to first take up the merits of the impugned issue. In sum and substance, the AO on the basis of the notings found in the name of 'Dhanush' from loose sheets seized from the premises of a third party, Shri Anbu assumed that these notings pertained to the assessee and that the assessee had obtained cash loans from Shri Anbu which he later on repaid. Surprisingly, there is no mention or assumption of any interest on such loans. Before dwelling into the facts, it is to be kept in mind that, Section 132(4A)(i) clearly stipulates that when *inter alia* any document is found in the possession or control of any person in the course of a search, it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i) of the Act. In other words, whenever a document is found from a person who is being searched, the normal presumption is that the said document belongs to that person and the contents is presumed to be true qua the said person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or



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satisfaction that the document pertains to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the conclusion that the contents of such seized material relates to someone else, and surmise & conjecture cannot take the place of independent corroborative evidence. Reason being, in case the AO wants to take reliance for making addition on the basis of the documents found during the course of search at third party, then the presumption u/s 132(4A) will not be available against the third party.

21. In light of the above, we now revert back to the facts before us. It is observed that, the material seized from the third party premises of Shri Anbu comprised of loose sheets which are found to contain daily notings of several amounts and it appears be a statement of receipts and payments maintained by the searched person. In these notings, there is a name 'Dhanush' & 'Actor Dhanush' found to be appearing at various places. Since the name appearing in the entry correlates with the name of the assessee, these notings were assumed to be pertaining to the assessee. There is no mention of 'loan' or 'interest' or any terms of loan(s) etc. on these sheets. The only thing appearing in the name 'Dhanush' and amounts corresponding thereto. Prima facie therefore, the nature of these notings are not discernible from a plain reading of these loose sheets alone. Though these loose sheets and the notings therein



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may be presumed to be true qua Shri Anbu, but such presumption cannot be straightaway extended to the assessee, as explained above. In this regard, as to the admissibility of notings found in loose sheets seized from third party premises, it is relevant to take note of the following principles laid down by the Hon'ble Supreme Court in case of **Common Cause (A Registered Society) v. UOI (394 ITR 220)** wherein it was laid down as under:-

(i) Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;

(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;

(iii) The meaning of account book would be spiral note book/pad but not loose sheets;

(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;

(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;

(vi) The Court has to be on guard while ordering investigation against person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.



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22. The Hon'ble Apex Court is thus found to have held that, the entries in loose-papers/sheets alone are not admissible as conclusive proof against a third person. Even if such loose sheets are treated as books of account kept in the ordinary course of business, then also entries therein shall not alone be sufficient evidence to charge a third person with liability. It is incumbent upon the person relying upon those entries to prove that they are in accordance with facts. Reason being, if the presumption qua the notings found in the seized material is extended to third party i.e. the assessee, in the present case, then any person for that matter can mention anyone's name in any loose paper / diary at their sweet will and that can be used to implicate such other person for no fault of the latter. Hence, these notings are required to be substantiated with some independent evidence or material which would show that they relate to or pertain to the assessee. In support of the foregoing proposition, we gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **CIT v. Sant Lal (423 ITR 1)**. In this case, the Department relied upon the notings of hundi in the diary seized from the premises of third party. The said notings allegedly contained entries of hundi transactions on behalf of parties including assessee whose names were re-written in abbreviated/code words. The Hon'ble Delhi High Court relying on its earlier decision in the case of **CIT v. Mahabir Prasad Gupta (ITA No. 814 of 2015)** is noted to have held that no addition can be made in the



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hands of an assessee on the basis of any diary seized during the course of search proceedings of a third party, since such diary was neither found at the assessee's premise and that the department had failed to provide any cogent material or gather any corroborative evidence to substantiate that it pertained to the assessee. The Court observed that the searched person could have written anyone's name on his own sweet will in his diary and therefore such noting on stand-alone basis along with the biased statement of the searched person cannot be used as a reliable evidence against the assessee.

23. Before us the Ld. CIT, DR argued that, the above entries found in loose sheets actually constituted books of accounts of the searched person and the entries stood corroborated against the assessee, by the statement of Shri Anbu recorded u/s.131(A) of the Act, wherein he had admitted to be involved in providing loans [Q Nos. 8 & 13], copy of which she had placed at Pages 13-45 of Paper Book. It is noticed that, Shri Anbu in his statement u/s.132(4) dated 07-02-2020 had stated that, he is *inter alia* involved in providing loans to persons in cinema industry [Q No.12]. He also later on admitted in his statement u/s.131(1A) of the Act that, to whoever he would provide cash loans, he would obtain their signatures as acknowledgment, or some collaterals or blank cheques etc. According to the Ld. CIT, DR, these statement(s) read in light of the notings found in



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the name of 'Dhanush' and the fact that the assessee was belonging to the cinema industry evidenced that, it was the assessee who had availed cash loans from Shri Anbu. Having gone through the statement(s) placed before us, we observe that, the statement(s) of Shri Anbu did not contain anything specific which incriminated the assessee or could have been used as tangible evidence against the assessee. The answers being relied upon by the Revenue are noted to be general assertions made by Shri Anbu regarding his business as a financier. In fact, it is observed that, the Investigating Officer had posed a series of questions on the basis of the material seized from the premises of Shri Anbu regarding the details of borrowers and the nature & purpose of such cash loan(s). Having read the corresponding answers given by Shri Anbu, we find that though he had identified and named several persons to whom he had advanced loans, but there was no mention of the assessee-Dhanush anywhere. In the entire statement, we do not find the mention of the name of the assessee or any specific admission by Shri Anbu that, he had given any cash loans to the assessee. According to us therefore, the statement of Shri Anbu does not assist the case of the Revenue.

24. We observe that the assessee at all times had unequivocally denied having any cash loan transactions with Shri Anbu. Further, as noted above, even Shri Anbu had not incriminated the assessee in any manner.



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The Revenue is found to have been drawing a linkage between these entries and the assessee, solely based on the first name of the assessee appearing in the material seized from the premises of Shri Anbu and the fact that, Shri Anbu was involved in providing loans to people in cinema industry. The Ld. AR has rightly explained that, such linkage was based solely on assumptions and surmise, and in absence of any independent linking evidence, it was unsafe to assume these entries to be sacrosanct against the assessee. The Ld. AR submitted that, there could be several persons by the name of 'Dhanush' or for that matter, 'Dhanush' may be used as a codename by the financier for someone else or any producer with whom the assessee may have worked with. He submitted that, the assessee is a well-known artist/actor and therefore it could also plausibly be a case that, certain persons or producers had availed loans in his name(s). Likewise, certain unscrupulous people may have claimed to be person(s) close to the assessee and acting on his behalf, surreptitiously obtained loans from Shri Anbu. The Ld. AR played out several possible scenarios which could have led to noting(s) under the name 'Dhanush', given the name and reputation of the assessee and that may be the reason that Shri Anbu has used the term "Dhanush F.M.S.& Dhanush Movie" in various entries. According to him therefore, unless there was any direct evidence available against the assessee linking him to these notings, the impugned addition was not justified. He further pointed out



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to us that, the search team had interrogated Shri Anbu at length and also made post-search enquiries from him and that, in none of his answers, wherein he admitted to having cash transactions with producers & distributors from Tamil cinema and had also named several persons with whom he dealt with, Shri Anbu had nowhere named the assessee-Dhanush. The Ld. AR thus contended that, this material aspect dispelled the AO's assumption that, the assessee was involved in some cash loan(s) transactions with Shri Anbu.

25. He also brought to our notice that, by Shri Anbu's own admission, had clearly stated that, wherever he would give cash loans, he would obtain signatures or acknowledgments of the borrower or confirmation on letter heads/stamp papers or collaterals from the persons to whom he would advance cash loans [Q Nos.12 & 13 of his statement dated 21-12-2020]. The Ld. AR however pointed out that, apart from these loose scribbles, there was no such other material viz., any signature or acknowledgment of the assessee, or any blank cheque or any promissory note or collateral given by the assessee; etc. found in the course of search, which would link these notings to the assessee. Hence, in light of the statement of Shri Anbu, as discussed in the foregoing, we find that there was no such tangible evidence or material found which would justify inferring these entries against the assessee. In our considered view



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therefore, the assumption made by the AO regarding the entries running into several crores to be loan(s) repaid by the assessee, was rightly rejected by the Ld. CIT(A). The Ld. AR taking us through the statement of Shri Anbu showed that, according to Shri Anbu, he would advance loan(s) towards production or distribution of films. The Ld. AR brought to our notice that, the assessee was a professional artist deriving professional income from acting in monies and that he had not produced any movies in his individual capacity and therefore there could not have been any occasion for him to personally avail loans from Shri Anbu. Having taken note of these facts, and the overall circumstances as discussed above, in our considered view, the assessee had indeed made out a plausible case and demonstrated that these loose notings on stand-alone basis were unsafe to be relied upon for making any addition(s) in his hands, in absence of any tangible corroborative material.

26. The Ld. CIT, DR however to lend support the case of the Revenue, brought on record the relevant submissions which were filed by Shri Anbu before the Settlement Commission/Interim Board of Settlement (IBS) and his IBS order, by way of additional evidence at the time of hearing. Though we have taken cognizance of the assessee's objections to the admission of such additional evidence at this stage, however this Tribunal being the last fact finding authority, we considered it fit to examine the



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same, for the completeness of the matters. Having perused these material, which have been placed at **Pages 214 to 304 of Paper Book-I**; we find that they are also of no assistance to the Revenue. The ledgers submitted by the Revenue are found to have been prepared/manufactured later on by Shri Anbu simply for the quietus of his assessment and in compliance with his offer of undisclosed income made before the Income-tax authorities. It appears that Shri Anbu has simply reproduced the scribbblings/notings found on the loose sheets by way of computerized ledgers to arrive at peak balance(s) and has arranged these amounts in his own convenient manner to support the disclosure of income made at the time of search and before the IBS. The Ld. AR, Shri Arjun Raj, painstakingly took us through the dates and amounts mentioned in the loose sheets vis-à-vis what was entered in the so-called ledgers prepared later on, and brought to our notice that, there were apparent discrepancies therein as well. For instance, an entry of Rs.2,00,00,000/- appearing on 06-06-2016 in the purported ledger is nowhere found in the loose sheets. Similarly, entries of Rs.6,50,00,000/- & Rs.5,00,00,000/- dated 06-04-2018 & 07-05-2014 mentioned in the ledgers are also not appearing in the loose sheets. The assessee has provided a detailed reconciliation which shows that, the entries in the post-search ledgers prepared later on itself didn't reconcile with the entries in the loose sheets/cash book. These factual discrepancies pointed



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out by the Ld. AR supports the assessee's contention that, it would be unsafe to rely on such alleged ledgers. Moreover, we also find that, there is nothing contained in these ledgers or the order of the IBS, which may be considered as any direct or corroborative evidence against the assessee. The usage of term 'Dhanush' in these prepared ledgers and in one of the tables appearing in the IBS cannot be *ipso facto* be assumed to be pertaining to the assessee. The Ld. Counsel, Shri Arjun Raj has rightly pointed out that, Shri Anbu has not identified the assessee specifically before the AO/Search Team/IBS nor is there any averment that these loose notings in the name of 'Dhanush' pertained to this assessee and thus without there being any independent confirmation or corroboration, it would be unsafe to simply assume that these notings against the assessee.

27. At this juncture, we rely on the guiding principles laid down by the Hon'ble Karnataka High Court in the case of **DCIT vs. Sunil Kumar Sharma (159 taxmann.com 179)** which was also seized with the question that as to whether 'loose sheets' under the Indian Evidence Act, 1872 can be relied upon to make addition in the hands of an assessee, in absence of any independent corroboration. The Hon'ble Karnataka High Court held that the 'loose sheets' does not constitute material evidence in



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relation to a third person and therefore set aside the notices issued u/s 153C of the Act, holding it to be void. The relevant findings are as follows:

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

23. In view of the aforementioned aspects, we have carefully examined the law declared by the Hon'ble Apex Court with regard to acceptance of diaries/loose sheets by the respondent-Revenue. In the case of V.C. Shukla (supra), at paragraphs 16 to 18 of the judgment, it is observed thus:

....

24. The aforesaid approach is in accordance with good reasoning and we are in full agreement with it. Applying the above tests, it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91).

25. The Hon'ble Supreme Court in the case of Common Cause (supra) at paragraphs 278 to 282 of the judgment, has observed thus:

....

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

28. Likewise, we find that, the Hon'ble Bombay High Court in the case of **PCIT v. Umesh Ishrani (108 taxmann.com 437)** on similar facts and circumstances upheld the order of the Tribunal holding that entries reflected in loose papers seized from premises of a third



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party, which were not corroborated with any other evidence on record, could not be relied upon by the Revenue to justify an addition in the hands of the assessee. The relevant judgment is reproduced hereunder:-

"1. This Appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration;

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of cash payment for purchase of shops by holding that the seized papers were not found from the premises of the assessee and hence presumption u/s. 132(4A), u/s. 292C of the IT Act, 1961 are not applicable, without appreciating that the seized papers were found during search in the premises of one of the partners Sri Laxmichand Rohira of the same firm for purchase of shops by the firm and in the said seized documents, amounts of cash paid by all the partners are noted and assessments made in the case of the said partner Shri Laxmichand Rohira relating to his share of cash payment has become final, and therefore, that evidence is also relevant for assessment of other partners, including the assessee?"

2. The Respondent-Assessee is an individual. He was the partner of the firm. The Income Tax Department had carried out search and seizure operation during which certain loose papers were collected. On the basis of loose papers additions were made in the hands of the individual partners and on protective basis on the hand of the firm. While deleting such addition in case of the present assessee the Tribunal noted that the documents nowhere show that any payments were made by same persons, no enquiry or verification was made with the seller of the shops or the developer. Tribunal therefore concluded that entries of the loose papers were not corroborated with any other evidence on record.

3. It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal noted that the loose papers entries were not clear and not corroborated by any independent evidence. No question of law therefore arises. Income Tax Appeal is dismissed."

29. Useful reference may be made to the decision of the coordinate Bench of this Tribunal at Panaji in the case of **Abhay Kumar**



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Bharamgouda Patil v. ACIT (96 taxmann.com 377). In this case, a survey was conducted upon a finance broker from whose possession a diary was found containing certain notings inter alia including the name of the assessee. The surveyed person had also incriminated the assessee and stated that, he had received monies in cash from the assessee, which was noted in his diary. On appeal, the Tribunal held that, these loose sheets were not admissible as evidence and also that the statement given by the surveyed person was not sufficient to justify the evidence as he had not brought on record any other credible or corroborative evidence to support his bald allegation against the assessee. The Tribunal inter alia observed that the assessee cannot be expected to prove a negative fact and that the onus was on the surveyed person / Revenue to bring corroborative material / evidence on record to show that the notings on these loose sheets did not belong to the surveyed person but the assessee and that it did actually reflect unaccounted cash transactions as alleged. The relevant findings are noted to be as follows:

"22. Now the questions that arise for our consideration, in our view, is whether the evidences found during the course of survey operations and the statements given by Shri S.K. Terdale could establish any link between the assessee and the amounts shown against his name in the diary and they support the case of the Assessing Officer that the money represent undisclosed income of the assessee?

23. We shall now examine the Statements given by Shri S.K. Terdale. He has given explanations on the entries found recorded in the diary in the statements given by him. He has stated that the moneys received from the assessee have been recorded against the name of the assessee in the diary.



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However, a careful perusal of the statements given by Shri S.K. Terdale would show that he has not ever met the assessee at all. He has only stated that the moneys were sent by the assessee through some persons and he has recorded the same against the name of the assessee. Even he could not identify the persons who brought the money to him or the denominations in which the money were brought. Thus it is seen that Shri S.K. Terdale has received money through some persons and they have stated that the money has been sent by the assessee. Accordingly he has recorded the same against the name of the assessee. If Shri S.K. Terdale could identify the persons who have brought money and if those persons happen to be the employees or any other related persons of the assessee, then it may be possible to state that the statements given by Shri S.K. Terdale stood corroborated. We also notice that Shri S.K. Terdale could not bring any other material on record to substantiate his statements. We have also noticed that the assessee has denied the transactions recorded against his name in the diary and also did not accept the statements given by Shri S.K. Terdale. We have also noticed that Shri S.K. Terdale could not substantiate his statements by bringing any other credible or corroborative evidences. In the absence of any material to substantiate the statements given by Shri S.K. Terdale, in our view, the same cannot be used against the assessee. As rightly pointed out by Id A.R, in our view, the assessee is being asked to prove a negative fact, which is not permissible under the law.

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24. Now we shall examine the impugned transactions under the test of human conduct and human probabilities. As noticed earlier, the aggregate amount recorded against the name of the assessee was Rs.8,85 lakhs in a period of three years though various installments, In case of money transactions of high magnitude, a prudent person would always insist for some kind of acknowledgment for the payments made, i.e., when the assessee makes payment to Shri S.K. Terdale, the assessee would have got acknowledgment from him and when Shri S.K. Terdale returns back money to the assessee, he would have got acknowledgment from the assessee. If there is no such acknowledgment, then there bound to be some difference with regard to the quantum of money transacted and hence in order to ensure that no such difference should arise, usually, some kind of acknowledgment/record shall be maintained. Under practical circumstances, a person could insist on repayment of money only if some kind of acknowledgment or evidence is available in order to bind the other party. We notice that the Survey operations did not bring on record any such document of acknowledgment/receipts. Hence the absence of any document in the form of receipts issued by the recipient or in the form of acknowledgment for money transactions of high magnitude, in our view, does not satisfy the test of human conduct and human probabilities.

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26. We shall now examine as to whether the presumption prescribed under the Act supports the case of the AO. We have noticed that the presumption in respect of survey operation is prescribed in sec. 292C of the Act, as per which the books of account and other evidences found during the course of survey shall be presumed to belong to the person who has been surveyed and the contents are true. Hence it is the responsibility of that person to prove the entries recorded therein are true. As contended by Id A.R, the said presumption may be used against the person who has been subjected to survey and not against others. Hence it is the primary responsibility of the Society/bank to explain the nature of documents/books of account and the entries recorded therein. The presumption prescribed in sec, 292C is rebuttable presumption. The question that arises is whether the society/bank has discharged its responsibility to prove that the transactions are true?. As noticed earlier, the Chairman of the society/bank has expressed his ignorance about the diary and he has stated that the diary has been maintained by Shri S.K. Tardale. Hence Shri S.K. Tardale was questioned with regard to the diary and he has simply stated that the money was received from the persons named in the diary, but could not furnish any other corroborative material to support his statement. Shri S.K. Tardale, however, could produce two persons and they have also owned up the transactions, meaning thereby, the society/bank can be said to have proved its stand with regard to those two persons. We have noticed that the assessee has denied/disowned the transactions and has also not accepted the statements given by Shri S.K.Terdale, In this kind of situation, it is the responsibility of the Society/S.K. Terdale to show that the assessee was wrong and the society was right. We have noticed earlier that the society/S.K. Tardele could not substantiate the statements given by him and also could not prove that the assessee was wrong. Hence, in our view, the society/bank or Shri S.K.Tardale could not be said to have substantiated or proved its stand in respect of the assessee. As observed earlier, it may not be fair to compel the assessee to prove a negative fact. The Id D.R, during the course of his argument, also submitted that the unexplained deposits have been assessed in the hands of society/bank as unexplained cash credits u/s 68 of the Act, meaning thereby, the society/bank has also failed to discharge the initial onus of proof placed upon its shoulders u/s 68 of the Act. Applying the same analogy, it can also be said that the society/bank has failed to discharge the initial burden of proof in respect of money recorded against the name of the assessee, since the assessee has not accepted the statements so given by Shri S.K. Terdale. Further, we have noticed that Shri S.K. Terdale has not met the assessee and also could not link the assessee with the persons who brought money. Hence we arc of the view that the AO cannot take the support of the statements given by Shri S.K. Terdale, since the same has not been substantiated.

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30. Before us, the Id A.R placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of Miss. Lata Mangeshkar 97 ITR 696. In the said case, the ITO came across a sort of a ledger maintained by the firm known as Vasu Films of Madras containing certain entries, which had been seized by the Income Tax authority from the premises of the above said firm. In the diary, some amount was written as "W" and some amount was written as "B" against the name of the assessee. In the statement recorded from Mr. Vasudev Menon, Managing partner of Vasu Films and from Mr. C.S. Kumar, Firm's Bombay manager, the above said entries were explained by them as the letter "W" would mean "white" and the letter "B" would mean "Black". The assessee was given an opportunity to cross-examine these persons. Thereafter, the Assessing Officer accepted the entries recorded in the diary and came to the conclusion that the assessee has concealed income. Accordingly, he made additions. Before the Tribunal, it was contended on behalf of the assessee that entire evidences on which lower authorities had relied, merely created suspicion that the assessee might have accepted payments in black but it did not take place of proof. The Tribunal, after appreciating piece of evidence, came to the conclusion that the evidences were not sufficient to prove even a single evidence, where the assessee could be said to have received money in black for which she did not pass a receipt. Accordingly the Tribunal deleted the addition made by the AO. The Hon'ble Bombay High Court has upheld the view taken by the Tribunal. In our view, this decision supports the case of the assessee also. The entries recorded in the diary were different from the entries found recorded in the regular books of account of the Society, i.e., the names of depositors noted in diary were not found in the regular books of account of the Society. Before income tax authorities, the society could have furnished only its regular books of accounts and it could not have relied upon the diary. Even though Shri S.K. Terdale has explained the entries recorded in the diary, he could not bring any material to substantiate his statements. The Chairman of the Society or any other higher authorities does not have any knowledge about the entries made in the diary. The assessee has not accepted the statements of Shri S.K. Terdale. The Id D.R mentioned about the failure of the assessee to avail cross-examination. We agree with the contentions of the Id A.R that there was no requirement to make any cross examination, since the assessee was not required to prove any negative fact. Hence, for the detailed reasons, discussed in the preceding paragraphs, we are of the view that none of the evidences support the case of the Assessing Officer."

30. We also rely on the decision of this Tribunal at Pune in the case of **Pradeep AmrutlalRunwal v. TRO (47 taxmann.com 293)** wherein also the AO had made addition(s) on the basis of notings found in the



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name of the assessee, in the course of search conducted on 'D' Group. This Tribunal held that, since no evidence was found relating to existence of any transaction between assessee and 'D Group' and no corroborative evidence was found to suggest that assessee had actually received said amount, no addition could have been made merely on basis of noting in loose papers found during search proceedings in case of 'D Group' against name of assessee. The relevant findings taken note of by us, is as follows:-

"5.3 According to us, the additions made by the Assessing Officer were not justified in the facts and circumstances vis-à-vis of the assessee. As discussed earlier, during the course of search in the case of Dhariwal Group, the only documents found on the basis of which the addition u/s 69A has been made in the case of the assessee are in the form of two loose papers wherein amounts of Rs. 4.80 Crores and Rs. 30 lacs were noted against the name "Mr. Pradeep Runwal". Apart from this, no evidence has been found to suggest that the assessee had actually received the said amount or that the assessee had entered into any transaction with Dhariwal Group. There is no evidence on record to suggest that the assessee has previous business relations with the Dhariwal Group. In the absence of any documentary evidence to suggest the same, it could not be presumed that the amounts reflected in the loose papers were the income of the assessee received from Dhariwal Group. It has been the consistent stand of the assessee that there may be many persons of the name Pradeep Runwal in Pune and there was no specific evidence to suggest that the said notings pertained to the assessee. Hence, it was not justified as to how, in the absence of any other corroborative details, the Assessing Officer has assumed that the amounts reflected the income of the assessee himself, while the assessee has no business dealings of his with Dhariwal Group. The Assessing Officer has not brought on record any evidence to suggest that Dhariwal Group has admitted that the amounts were paid to the assessee. Hence, simply because the name of the assessee is noted on the seized papers does not mean that the addition could be made in the hands of the assessee. Since no evidence was found relating to the existence of any transaction between the assessee and Dhariwal Group and in the absence of any corroborative evidence to suggest that the assessee had actually received the said amount, no addition could be made merely on the basis of noting in loose papers found during the search proceedings in the case of Dhariwal Group against the name of the assessee.

5.4 The presumption u/s 132(4A) is available only in respect of the person from whom the paper is seized. It could not be applied against a third party



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and hence, no addition could be made on the basis of the evidence found with third party. The presumption u/s. 132(4A) could be used only against the person from whose premises the documents are found and not against the person whose name appears in the seized papers.

5.5 In this case, the addition has been made on the basis of the documents found with Dhariwal Group and thus, the presumption u/s. 132(4A) could not be used against the assessee since no incriminating documents were found with it. In the case of Addl. CIT v. Miss Lata Mangeshkar [1974] 97 ITR 696 (Bom), the addition was made in the hands of the assessee on the basis of the entries in the books of third persons. Hon'ble Bombay High Court held that such addition could not be made only on the basis of the notings in the books of third persons. The facts of the present case are covered by the decision of Miss Lata Mangeshkar (supra). It is a settled legal position that the decision of jurisdictional High Court is binding on all authorities below it. Thus, the reliance placed by the Assessing Officer on the loose papers is not justified at all. Therefore, the question of making any addition is not justified in the absence of other corroborative evidence to that effect.

5.6 Without prejudice to the above, the learned Authorized Representative submitted that the Assessing Officer was not justified in making the additions by relying on the provisions of section 114 of the Indian Evidence Act. The concerned Assessing Officer has referred the aforesaid section which states that the court may presume that the evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it. It is pertinent to mention this rule applies to the cases wherein it is evident or an established fact that a particular evidence or document was in possession of the assessee. For example, an owner of a land may well be expected to be in possession of a 7/12 extract of the said land in order to check whether the said land was used for agricultural purposes. In the present case, the provisions relied by the Assessing Officer are not applicable, the assessee is not withholding any documents. The case of department is that the amount mentioned on the seized paper found with the Dhariwal Group indicates that the assessee has received the amount, therefore, the burden was on the Assessing Officer to establish the same. The reliance placed on the provisions of section 114 of Indian Evidence Act is misplaced.

5.7 As stated above, it has been consistent stand of the assessee that the assessee has had no business relations whatsoever with the Dhariwal Group. Further, apart from the noting on paper with the name 'Pradeep Runwal, there is no corroborative evidence in this regard against the assessee. In such circumstances, where the assessee has not entered into any transaction with the Dhariwal Group, one certainly could not expect the assessee to be in possession of any evidence to suggest that it has not entered into any such transaction except for his books of account which have already been verified by the concerned Assessing Officer. Hence, the Assessing Officer was not justified in placing reliance on the provision of section 114 of the Indian Evidence Act.

5.8 It was further submitted on behalf of assessee that the Assessing Officer was not justified in making the addition by relying on the provisions of section 80 of the Indian Evidence Act which states that there is a presumption that the documents produced before the court as record of evidence are genuine. In this regard, the stand of the assessee is that in the case of assessee,



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document produced was merely in the form of a rough noting wherein certain amounts were written against the name 'Pradeep Runwal'. As discussed earlier, there may be many people of that name in Pune and in the absence of any other corroborative evidence to that effect. In such a situation, it cannot be inferred that it belongs to the assessee.

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5.14 We find that in ACIT v. Thakkar Developers Ltd. [IT Appeal No. 581 (PN) of 2008, dated 26-7-2010, ITAT in paras 3 and 4 held as under:—

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6. Similar view has been taken by ITAT, Pune in ACIT v. Amit D Irshid [IT Appeal No.988 (PN) of 2011, dated 22-4-2013] that presumption u/s. 134(4A) is available only against the person from whose possession the document is found and not against the third person. In the absence of clinching evidence against the third person as stated above, no action could be taken against him. In such a situation, the Assessing Officer was not justified to make addition in question in assessee's case. In view of above, we are of the view that the addition made by the Assessing Officer is not justified and the same is directed to be deleted. It is pertinent to mention here that this case is being decided in its facts and circumstances; it cannot be applied to other cases as such."

31. The Ld. CIT, DR had also pointed out that, loan(s) had been availed by M/s.Wunderbar Films P. Ltd., in which the assessee was a Director which were availed through banking channel and thus in her opinion, this linkage corroborated the veracity of the cash notings. The Ld. AR also fairly submitted that M/s.Wunderbar Films P. Ltd., had business transaction with Shri Anbu, which are duly accounted in its books and transactions were through proper banking channel. He also asserted that the assessee had also taken loan through banking channel from Shri Anbu which has been duly recorded in the books. The Ld. AR has rightly pointed out that, only because M/s.Wunderbar Films P. Ltd. /assessee had business transactions with Shri Anbu cannot raise a presumption to be drawn against the assessee that, he had taken cash-loans from Shri Anbu, whose receipt / repayment has not been recorded in his books.



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According to us, these contemporaneous facts may have give rise to suspicion, which could have been a cause for further verification and investigation, but mere suspicion cannot be a ground to hold that the impugned entries denoted loans which were taken and repaid by the assessee-individual in cash, to make addition in the hands of the assessee. A suspicion however strong it may be, has to be supported by corroborative evidence. As we have observed earlier, Shri Anbu had clearly stated that he would obtain certain signatures or acknowledgments or confirmation on letterheads or collaterals from persons whom he would advance cash loans. The Revenue has not brought on record any such evidence which was found in the name of assessee or M/s.Wunderbar Films P. Ltd. Hence, the linkage which Ld. DR wants us to presume merely because M/s.Wunderbar Films P. Ltd./assessee had availed loan through banking channel from Shri Anbu, is found to precarious, in absence of any corroborative evidence, and so it is rejected. In our considered view therefore, the AO ought to have probed and investigated further, confronted Shri Anbu with the entries, obtained some independent corroboration, and thereafter should have also allowed an opportunity to the assessee to cross-examine, before making the impugned addition. However, no such effort/exercise is found to have been made by the AO. Rather, he is found to have simply acted on surmise and assumptions, which cannot be countenanced.



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32. Moreover, it has been brought to our notice that, the entries found in the loose sheets under different acronyms of 'Dhanush' inter alia comprised of loans availed through banking channel by M/s.Wunderbar Films P. Ltd. For this reason, the assessment(s) of M/s.Wunderbar Films P. Ltd., was also reopened and completed by the same AO u/s 153C of the Act, in which we find that, no adverse view was taken in the light of entries of cash transactions(s) with Shri Anbu forming part of the same loose-sheets/cash book. As noted earlier, M/s.Wunderbar Films P. Ltd.was the person involved in production and distribution of movies and that the assessee-individual was a professional artist deriving income from his professional work. The Ld. AR has rightly averred that, when the AO did not take any adverse view against M/s.Wunderbar Films P. Ltd., with whom Shri Anbu had business transactions whose entries/notings were also found under the acronyms of 'Dhanush' in the same loose sheets/cash book, then it was unjustified on the AO's part to simply presume that the assessee-individual had taken cash loan(s) from Shri Anbu, without bringing any cogent corroborative material on record which suggests so. Hence, in light of the aforesaid facts as well, the purported linkage being attempted to be made by the Ld. DR between the assessee-individual and the entries of cash notings, on the basis of the fact that, the assessee/ Wunderbar Films P. Ltd had transactions through banking channel with Shri Anbu, is found to be unsafe and is thus rejected.



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33. Hence, from the facts discussed above, it is noticed that, the AO had made addition of several crores of cash loans availed by the assessee, simply on the basis of notings found in loose papers/book seized from the premises of a third party, i.e. Mr. Anbu in this case; despite the assessee's explicit and categorical denial that no cash loans whatsoever has been borrowed from Shri Anbu and also there being no statement of Shri Anbu specifically incriminating the assessee. In our considered opinion, on these given facts, the onus did lay on the Revenue to substantiate their case that, the notings found in the name of assessee at third party premises related to him, which he is found to have failed to do. Neither did the AO personally examine Shri Anbu qua these notings nor did he even attempt to make any independent enquiries on this issue. Instead, the AO is found to have simply assumed that, the notings ought to relate to the assessee. Also, the additional evidence brought on record by the Revenue did not assist their case. In our considered view, the Ld. CIT(A) had rightly held the impugned seized material to be unreliable and thereby deleted the addition impugned before us. Our view finds support from the decision of this Tribunal at Hyderabad in in case of **Nagarjuna Construction Co. Ltd. v. Dy. CIT (52 SOT 178)** wherein in similar factual context, it was held as under:-

".....The basis for addition is only note book/loose slips. These note books/loose slips are unsigned documents. The Assessing Officer has not



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established nexus between the note book loose slips with accrual actual/receipt of interest. The note book/loose slips seized found during the course of search is a dumb document having no evidentiary value, no addition can be made in the absence of corroborative material. If there is circumstantial evidence in the form of promissory notes, loan agreement and bank entries, the addition is to be made on that basis to the extent of material available. The assessee is not expected to explain the loose papers found as there is no evidence other than note book/loose slips regarding accrual of interest. It is held no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has carried on money lending business. Nothing on the note book/diary/loose sheets are required to be supported/corroborated by other evidence and are also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. In the instant case, undoubtedly no statement from the parties whose names found in the note book/loose slips has been brought to the notice and as such entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search is not possible."

34. In view of the above, we see no reason to interfere with the order of the Ld. CIT(A) deleting the addition(s) impugned before us. Hence, the grounds raised by the Revenue are dismissed.

35. Since we have already upheld the order of the Ld. CIT(A) deleting the impugned addition(s) on merits, the legal grounds raised by the Revenue as well as the cross objections of the assessee with regard to the validity of the proceedings initiated u/s.153C of the Act having become academic, is not being separately adjudicated and is accordingly left open.

36. Since the facts and circumstances in the lead case under consideration, being AY 2015-16 in ITA No.3188/Chny/2024 is analogous



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to the appeals of the Revenue for AYs 2016-17, 2017-18, 2019-20 & 2020-21 in ITA Nos.3189 to 3192/Chny/2024, our decision rendered above in the case of ITA No. 3188/Chny/2024, for A.Y. 2015-16 shall apply *mutatis mutandis* to the appeals for AYs 2016-17, 2017-18, 2019-20 & 2020-21 as well.

37. In the result, all the appeals of the Revenue and Cross-Objections of the assessee are dismissed.

Order pronounced on the 30th day of June, 2025, in Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30th June, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF