

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

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

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

आयकर अपील सं./ITA No. 280/Chny/2025
निर्धारण वर्ष/Assessment Year: 2022-23

The DCIT, Central Circle-2(2), Chennai.	v.	Abdul Azeez Nagoor Gani, 4, Kattukoddalur Road, Cuddalore, Viridhachalam-606 001.
		[PAN: AFCPN 7503 G]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
Department by	:	Ms. Anitha, Addl.CIT
Assessee by	:	Mr. G. Baskar, Advocate & Mr. P.M. Kathir, Advocate
सुनवाईकीतारीख/Date of Hearing	:	17.07.2025
घोषणाकीतारीख /Date of Pronouncement	:	12.09.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)- 19, Chennai (hereinafter referred to as 'Ld.CIT(A)'), dated 14.11.2024 for the Assessment Year (hereinafter referred to as 'AY') 2022-23 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The facts of the case in brief are that, the assessee is an individual who is carrying on business of real estate broking agency under the name



:: 2 ::

& style of M/s National Estate. A search action u/s 132 of the Act took place on M/s Jayapriya Company Group, in the course of which, the assessee was also searched u/s 132 of the Act. From the material seized in the course of search, it was gathered that the assessee primarily mediates between potential buyers and the Jayapriya Group for which he derived commission income. For the relevant AY 2022-23, the assessee had filed return of income declaring total income of Rs.12,15,220/-. The case of the assessee was selected for compulsory scrutiny in which addition(s) aggregating to Rs.2,01,34,950/- was made by the AO to the total income. Aggrieved by the order of the AO, the assessee carried the matter in appeal and the Ld. CIT(A) was pleased to delete the same. Being aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before us.

3. Ground No. 1 is general in nature and therefore does not call for any specific adjudication and is accordingly dismissed.

4. Ground Nos. 2 to 4 of the Revenue's appeal relates to the Ld. CIT(A)'s action of deleting the addition of Rs.1,01,34,950/- made by way of unaccounted commission income of the assessee. The background facts leading to the impugned addition are that, the Revenue had found and seized tally database of Jayapriya Group in the course of search wherein inter alia the accounts ledger of the assessee for the period 01.04.2021 to



:: 3 ::

31.03.2022 was found. The AO noted that the ledger account contained four (4) entries for the relevant year, which were as follows:

Date	Nature of Payment	Amount
22-04-2021	Cash	1,34,950
22-07-2021	Bank	30,00,000
30-07-2021	Bank	30,00,000
04-08-2021	Bank	40,00,000

5. The assessee had claimed that the above amounts represented advances received from Jayapriya Group towards the project development work being carried out on their behalf. The AO however was of the view that these receipts was actually commission income of the assessee which was paid in guise of project advance and therefore show caused the assessee as to why the same was not offered for taxation in his return of income for AY 2022-23. In response to the assessee's request, the AO provided the copy of the seized material. Thereafter the assessee vide letter dated 22.02.2024 inter alia submitted that, these amounts were received for the development of the projects of Jayapriya Company and that the assessee being their agent, had received and spent, these amounts on their behalf and it was not his commission income. The assessee submitted that, this fact was also available in the material seized during the course of search itself. The AO however is noted to have dismissed the contention of the assessee as evasive and superficial. According to him, the case being made out by the assessee was a make-believe arrangement with the connivance of the Jayapriya Group to



:: 4 ::

disguise the commission income as project advance, so as to avoid tax on the same. On appeal, the Ld. CIT(A) was pleased to delete the impugned addition by holding as under:-

"6.3. The undersigned has carefully examined the various issues raised by the appellant in the grounds of appeal. As per the assessment order the seized materials relied upon by the AO in making the additions in the hands of the appellant were found and seized at third party premise. Therefore, the presumptions laid down u/s. 132(4A) and u/s. 292C of the Act will not apply. The appellant during the course of the assessment proceeding itself has made it clear, that the relevant transactions such as receipt and payments are narrated in the seized material itself and requested to consider the whole transaction narrated in the seized material. However, the AO relied upon on one part of the seized material and neglected to consider the narrations contained in the other part of the same seized material.

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6.6. Likewise, for the AY 2021-22 & 2022-23, the appellant was able to explain along with the relevant ledger / cashbook to substantiate where the AO has relied upon part of the books and conveniently neglected the other part.

6.7. The evidences adduced by the appellant per se will explain that the narrations contained in the seized material is having two parts, one is payment part and another is receipt part. The appellant in his submission before the AO during the course of assessment proceedings itself has explained that the narrations contained in the seized material are self-explanatory about the payment and receipt part. As brought out by the appellant in his submission, relying upon part of the document and ignoring the other part is not appropriate and against the principles of fairness. The principle of fairness mandates that AO should consider all aspects of the seized material to arrive at a fair conclusion. In the case of CIT Vs. PV Kalyanasundaram 294 ITR 49(SC), the Hon'ble Apex court has held that the AO should not cherry-pick documents from the seized material and the AO must consider all the relevant documents holistically to ensure a fair assessment. Further, as relied upon by the appellant, the Hon'ble Rajasthan High Court in the case of DCIT vs. Hotel Joshi 242 ITR 478 (MP) has held that partial reliance on seized material without considering the complete context leads to an unjust and biased assessment.

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6.9 The AO in the assessment order has not brought into record of any statement recorded from the author of the narrations made in the seized material. Further, the investigation officer or the assessing officer has not



:: 5 ::

attempted to cross verify the contents in the seized material with any of the managing staff of M/s. Jayapriya Company. Unless and until such exercise is carried out there can be no case on the part of the AO to arrive at a presumption that the payments are relating to the commission income held by the appellant.

6.10 From the beginning the appellant is contending that he is managing the various projects of Jayapriya Group of concerns and thereby earning commission income. The AR during the course of the appellate proceedings has made available the relevant return of income for the AYs 2019-20, 2021-22 and 2022-23 along with relevant computation, wherein the appellant has disclosed commission income of Rs.3,75,460/-, Rs.3,22,630/- and Rs.3,90,200/- for the AY 2019-20, 2021-22 and 2022-23 respectively. The AR further claimed that these are all the commission income earned from the various projects undertaken by the M/s. Jayapriya Group and contended that the AO in the assessment order has not brought on record any findings that the commission income disclosed by the appellant in the return of income is untrue.

6.11 As per the discussion made supra, the undersigned is of the considered view that the AO has misunderstood the narrations contained in the seized material as a commission income of the appellant. The AO incorrectly labelled the payment as a commission income of the appellant without bringing any evidence to substantiate the same as commission income. Further, as evidence was found at third party premise, the decision rendered by the Hon'ble jurisdictional ITAT in the case of DCIT Central circle 2(1) v. Appu Direct Pvt Ltd in ITA Nos. 665 & 666/Chny/2023 and CO Nos: 37 & 38/Chny/2023 dt.24.01.2024 will squarely apply to the facts of the appellant case. In this case, the it has been held that

"additions made by the AO us. 69A of the Act towards alleged cash transactions recorded in excel sheets found during the course of search proceedings of ..., without there being any corroborative evidence is unsustainable in law".

6.12 Therefore, in the present case the additions made towards the alleged cash transaction recorded in the excel sheet found during the course of search proceedings at third party premises without there being any corroborative evidence is unsustainable in law. In view of this, the undersigned is of the view that the addition of Rs.31,50,000/-, Rs.72,13,000/- and Rs. 1,01,34,950/- made by the AO and treating the same as a commission income of the appellant is devoid of merits. Therefore, all the grounds raised by the appellant upon these issues are hereby treated as allowed and the AO is directed to delete the addition of Rs.31,50,000/-, Rs.72,13,000/- and Rs.1,01,34,950/- for the AYs 2019-20, 2021-22 and 2022-23 respectively."

6. Aggrieved by this order, the Revenue is now in appeal before us.



:: 6 ::

7. We have heard the rival submissions and perused the material placed on record. It is observed that, the assessee's ledger from the tally accounts of Jayapriya Company showed that, the latter had paid aggregate sum of Rs.1,01,34,950/- to the assessee. Having perused the extract of the ledger, which was set out at Page 31 of the assessment order, it is noted that, the entries in the ledger do not have any narrations. Hence, the only discernible aspect is that the impugned amount was paid to the assessee. However, the nature and purpose of these payments are not emanating from the said ledger. It is not in dispute that the assessee had received the same in his regular bank account, except sum of Rs.1,34,950/- which was received in cash. When enquired about the nature of the receipt, the assessee had explained that, these were project advances received towards the project development works carried out on behalf of Jayapriya Group. The assessee is noted to have adduced the day book of the Jayapriya Company which was inter alia forming part of the same seized tally data. The assessee showed that, the Jayapriya Group had recorded both the payment as well as corresponding receipt of the same sum, which in itself was self-explanatory. The Ld. AR pointed out that, the name of the project for which the impugned payment was also discernible from the nomenclature of the journal entries. He therefore claimed that, the entries in the day book itself evidenced that the payments were received by the assessee



:: 7 ::

for and on behalf of the Jayapriya Group for incurring developmental costs in relation to their real estate projects. We find that, the Ld. CIT(A) had appreciated the contents of these seized material and rightly arrived at the conclusion that, the AO had selectively relied upon part of the documents (payment to the assessee), ignoring the other part (corresponding receipt of the same sum), and such action of the AO cannot be countenanced. We are also in agreement with the Ld. CIT(A), that there are no such narrations in the seized material which suggest that, these payments were towards assessee's commission income and therefore the case sought to be made out by the Revenue hinges solely on suspicion, which cannot be the basis to justify the impugned addition.

8. It is noted that, there is also no statement recorded from the searched party qua these entries. It is not a case that the author of these entries had admitted that, these payments were actually in the nature of commission given in the guise of advance. The AO has also not brought on record any evidence to show that the impugned payment made by Jayapriya Company was claimed by them as commission expenditure in their books of accounts for the relevant AY 2022-23. The AO also did not attempt any cross-verification from the Jayapriya Group. Instead, it is seen that, the AO chose to sit back with folded hands till the assessee exhausted all his explanation and evidences and then merely reject the same without conducting any independent inquiry or verification



:: 8 ::

whatsoever. We thus countenance the Ld. CIT(A)'s findings that, unless and until the aforesaid exercise was carried out or any corroborative evidence was brought on record, the AO could not simply act on an assumption that, the advances given by Jayapriya Company was actually the assessee's commission income. For the aforesaid reasons, we see no reason to interfere with the above order of Ld. CIT(A) and accordingly dismiss these grounds of the Revenue.

9. Ground Nos. 5 to 8 of the appeal relates to the addition of Rs.1,00,00,000/- made by way of undisclosed income u/s 69B of the Act. The facts relating to this issue are that, during the course of search at the assessee's premises, one loose sheet was seized inter alia ID marked ANN/PB/Loose Sheets/AN/3, Page No. 11 wherein there was a narration of receipt of cash of Rs.1,00,00,000/- by Shri N Venkatesh from the assessee and he stated that on his behalf, his wife Smt. Kousalya will sign it. The assessee was confronted with this loose sheet at the time of search and in his statement recorded u/s 132(4) of the Act, he explained that, for a property purchased by M/s Nataa Sand Pvt Ltd in Nalmukal Village for Rs.60,00,000/-, an additional cash payment of Rs.1,00,00,000/- was made to Shri N Venkatesh. The assessee further explained that, the Sub-Registrar noticed that the property which was subjected to registration was under-valued by Rs.53,22,703/-, due to



:: 9 ::

which the seller demanded cash payment of Rs.1,00,00,000/- on account of increased valuation of property.

10. In the course of assessment, the assessee vide his letter dated 07.02.2024 retracted his original statement and submitted that it was obtained under duress and pressure. The assessee submitted that, the impugned loose sheet was not the stamp receipt and therefore this document did not carry any evidentiary value. He further submitted that, the said loose sheet was dated 06.03.2020 whereas the additional stamp duty was paid only on 24.03.2021 and therefore it was practically not plausible for a seller to demand additional payment much before the property was assessed to additional stamp duty. The assessee also pointed out that, the additional value of the property was determined by the sub-registrar at Rs.53,22,703/- and therefore it was beyond logic that the purchaser would have paid Rs.1,00,00,000/- against additional value of Rs.53.22 lakhs. The assessee further requested that, his averments may be cross verified with Mr. Venkatesh or Mrs. Kousalya who had sold the property. The assessee therefore claimed that, the impugned loose sheet was a dumb document and therefore in absence of any corroborative evidence, no addition is permissible on this count. The AO however, rejected the contentions put forth by the assessee by holding that, it was devoid of any merits and lacked any direct evidence. The AO treated the retraction to be an afterthought. The AO also observed that,



:: 10 ::

though the loose sheet was indeed dated 06.03.2020 but the assessee had admitted that, this date was mistakenly mentioned and that the actual payment was made in August 2021. With these observations, the AO added the impugned sum of Rs.1,00,00,000/- by way of undisclosed income of the assessee.

11. Aggrieved by the above order of the AO, the assessee carried the matter in appeal before the Ld. CIT(A) who deleted the addition by holding as under:

"6.18. The undersigned has carefully examined the issue under consideration. The property transaction which the AO relied upon is between M/s Nata sand Pvt. Ltd. (purchaser) and Shri Venkatesh (vendor). The appellant in his individual capacity has not purchase the property under consideration. No doubt during the course of search an acknowledgement said to have been received by Sri. N Venkatesh's wife Smt. Kousalya was found and seized. While recording the statement U/s. 132(4) of the Act, the Appellant admitted about the payment of Rs.1,00,00,000/- for the purchase of property from Sri N Venkatesh and linked the same to the valuation of property made by the Sub Registrar and enhancement of the value. The crucial issue involved is that the document was registered on 20.10.2020. The additional stamp duty was paid on 24.03.2021. However, the seized document was dated 06.03.2020. On account of the inconsistency in the date in the seized material and additional stamp duty paid, the statement recorded from the Appellant during the course of the search wherein the Appellant has linked the additional stamp duty paid, requires corroboration. As correctly relied upon by the Appellant the Hon'ble Delhi High Court in the case of CIT v Kulwant Rai (2007) 291 ITR 36 (Delhi) has held that mere possession of a document does not automatically lead to a conclusion that the transactions mentioned therein has taken place.

6.19. Further the Hon'ble Gujarat High Court in the case of CIT v S.M.S Investment Corporation Pvt Ltd. (2002) 254 ITR 170 (Guj) has held that documents found in possession of an assessee must be corroborated with other evidence to establish that the transactions pertain to the assessee. The Apex Court in the case of Chuharmal v CIT (1988) 172 ITR 250 (SC) has observed that mere possession of a document does not automatically lead to the conclusion that the transactions pertain to the person in possession. The court pointed out that further evidence is required to



:: 11 ::

substantiate the claim that the contents of the documents pertain to the assessee.

6.20. The undersigned on examination of the assessment order found that the AO has not made any attempt to examine the author of the document said to be Sri. N Venkatesh or his wife Smt. Kousalya. It is unknown whether any action is taken in the case of Sri N Venkatesh or not. Unless and until the author of the document is examined and brought on record, any addition made on the basis of narrations contained in such document, can only be an assumption. The AO without examining the entire transaction with all the relevant parties concerned, has arrived at a conclusion and made the addition. Therefore, the undersigned is of the considered view that the addition made by the AO, without bringing any corroborative evidence, is devoid of merit. Accordingly, all the grounds raised by the Appellant on this issue are hereby treated as allowed and the AO is directed to delete the addition of Rs.1,00,00,000/- made as unexplained investment U/s.69B of the Act."

12. Being aggrieved by the Ld. CIT(A)'s order, the Revenue is in appeal before us.

13. Heard both the parties. At the outset, the Ld. AR pointed out that, the impugned property in question was purchased by M/s Naata Sand Pvt Ltd and not the assessee and therefore under no circumstance could the allegation of undisclosed on-monies payment be fastened onto the assessee. He contended that, M/s Naata Sand Pvt Ltd was a separate juridical person assessed to tax in their own right and only because the assessee in his statement admitted (though retracted later on) that on-monies were paid in connection with the land purchase, it would be unjustified to infer and add the notings found in the loose sheet in the individual hands of the assessee. In support, he referred to the following observations made by the Hon'ble Supreme Court in the case of **ITO v. Ch. Atchiah (218 ITR 239)** wherein it was held as under:-



:: 12 ::

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

14. We find merit in the above contention put forth by the assessee and note that his case is squarely covered by the decision rendered by the coordinate Bench of this Tribunal in the case of **DCIT v. Gopu Rajgopal (ITA No. 1811/Chny/2024)**. In the decided case, a diary was found from the premises of a third party who admitted that certain sums were paid to the assessee by way of on-monies for purchase of property from a LLP in which he was a partner. The AO added the on-monies in the hands of the assessee. On appeal, one of the arguments put forth by the assessee was that, the property was dealt with by the LLP and not him and therefore he was the '*wrong person*' to be taxed and that inference, if any, qua such notings could have only been drawn against the LLP, which was the '*right person*' in the present case. Following the decision of Hon'ble Apex Court in the case of **ITO v. Ch. Atchiah (supra)** this Tribunal deleted the addition by observing as under:-

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



:: 13 ::

that the addition made on account of the on-monies on monies in the hands of the assessee was unjustified. For this, we gainfully refer to the following observations made by the Hon'ble Supreme Court in the case of ITO Vs Ch. Atchiah (218 ITR 239) 23 wherein it was held as under:-

.....

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

.....

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

15. It is also noted that, the loose sheet was dated 06.03.2020 and therefore having regard to the presumption set out in Section 132(4A) and 292C of the Act, the Revenue couldn't have acted upon this document for the relevant AY 2022-23, which indicates of purported events, if any, in FY 2019-20 relevant to AY 2020-21. Hence, there is merit in the alternate plea of the assessee that, under no circumstance, could the impugned addition made in the relevant AY 2022-23. We find that, the AO had added the impugned sum in AY 2022-23 by relying on the assessee's statement u/s 132(4) of the Act wherein he had inter alia stated that the date on this document was incorrect. According to us, such a bald statement sans any corroborative material to disprove the contents of the



ITA No.278/Chny/2025
(AY 2020-21)
Abdul Azeez Nagoor Gani

:: 14 ::

noting(s) was unreliable, particularly when the assessee had also retracted his original statement.

16. For the above reasons and relying on the decisions (supra), we uphold the order of Ld. CIT(A) deleting the addition of undisclosed income of Rs.1,00,00,000/-. These grounds are therefore dismissed.

17. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 12th day of September, 2025, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12th September, 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