

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE MANISH BORAD,
ACCOUNTANT MEMBER AND
HON'BLE MADHUMITA ROY, JUDICIAL MEMBER

ITA No.680/Ind/2018
Assessment Year 2009-10

DCIT-1(1) : Appellant

Bhopal

V/s

Shri Neeraj Mandloi,

7/7 Bhagwandas Road,

Mandi Road,

New Delhi

: Respondent

PAN ADRPM0776H

C.O.No.04/Ind/2020

Arising out of ITA No.680/Ind/2018

Assessment Year 2009-10

Shri Neeraj Mandloi,

7/7 Bhagwandas Road,

Mandi Road,

New Delhi

: Appellant

PAN ADRPM0776H

V/s

DCIT-1(1)

: Respondent

Shri Neeraj Mandloi

ITA No.680/Ind/2020 & C.O.No.04/Ind/2020

Revenue by	Shri S.S. Mantri, CIT-DR
Assessee by	S/Shri Sumit Neema, Sr. Adv with Gagan Tiwary & Piyush Parashar, Advocates
Date of Hearing	24.06.2021
Date of Pronouncement	28.07.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal & Cross Appeal for Assessment Year 2009-10 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Bhopal dated 24.05.2018 which is arising out of the order u/s 143(3) r.w.s. 147 of the Income Tax Act 1961(In short the 'Act') dated 31.12.2016 framed by ACIT-1(1), Bhopal.

2. Revenue has raised following grounds of appeal:-

ITA No.680/Ind/2018 Assessment Year 2009-10

“On the facts and in the circumstances of the case of the case, the CIT(Appeal) has erred in:

1. “Whether on the facts and in the circumstances of the case the ld. CIT(A)

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has erred in deleting the addition of Rs. 2.21 Crores by holding that in the absence of any cogent, incriminating or positive corroborative material, the loose papers found and seized from the premises of Shri Mukesh Sharma have no evidentiary value, when one of the awardee's of contract, Nagarjuna Construction Ltd, admitted to explained expenditure of Rs.9.68 crores in Indore Project, which tantamount to siphoning the cash from books of accounts, and therefore, establishes the nexus between the documents seized (coded documents) from the premises of Shri Mukesh Sharma, the liaison agent and the need for siphoning money from the Indore sewerage project?

2.The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal..

3. Assessee has raised the following Cross Objection;

C.O.No.04/Ind/2020 Assessment Year 2009-10

1.That the Ld CIT (A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 147.

2.That the Ld CIT (A) failed to appreciate that reassessment was initiated pursuant to search and seizure operation carried out at the premises of third parties wherein certain documents were found which allegedly belonged to the present appellant and thus under such facts reassessment could have be done only u/s 153C and not u/s 147 and thus the impugned assessment order was liable to be quashed as being without

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jurisdiction.

3.That the Ld CIT(A) failed to appreciate that section 153 C overrides section 147/148 and thus proceedings which are initiated pursuant to document seized under search & seizure operations in third persons premises can only be under section 153C and not under section 147/148.

4. Facts, in brief, are that the assessee filed original return of income on 01.5.2009 declaring total income at Rs.7,06,164/-. A search and seizure operation u/s 132 of the Act was conducted at the business and residential premises of Shri Mukesh Sharma on 21.7.2008 wherein some documents were seized. As per the Assessing Officer, the seized documents indicated that the assessee had received certain payments in facilitating the award of sewerage contracts under JNNRUM to M/s. Nagarjuna Construction Co. Ltd., Hyderabad and M/s. Simplex Infrastructure P. Ltd., Kolkata while holding the post of Commissioner, Nagar Nigam, Indore. Notices u/s 148 & 142(1) were issued on 27.3.2014 & 03.2.2015, respectively, to file return of income and in response, the assessee submitted that the original return filed may be treated as filed in compliance to notice u/s 148. The assessee objected to the proceedings initiated u/s 148 by filing a Writ Petition in the Hon'ble

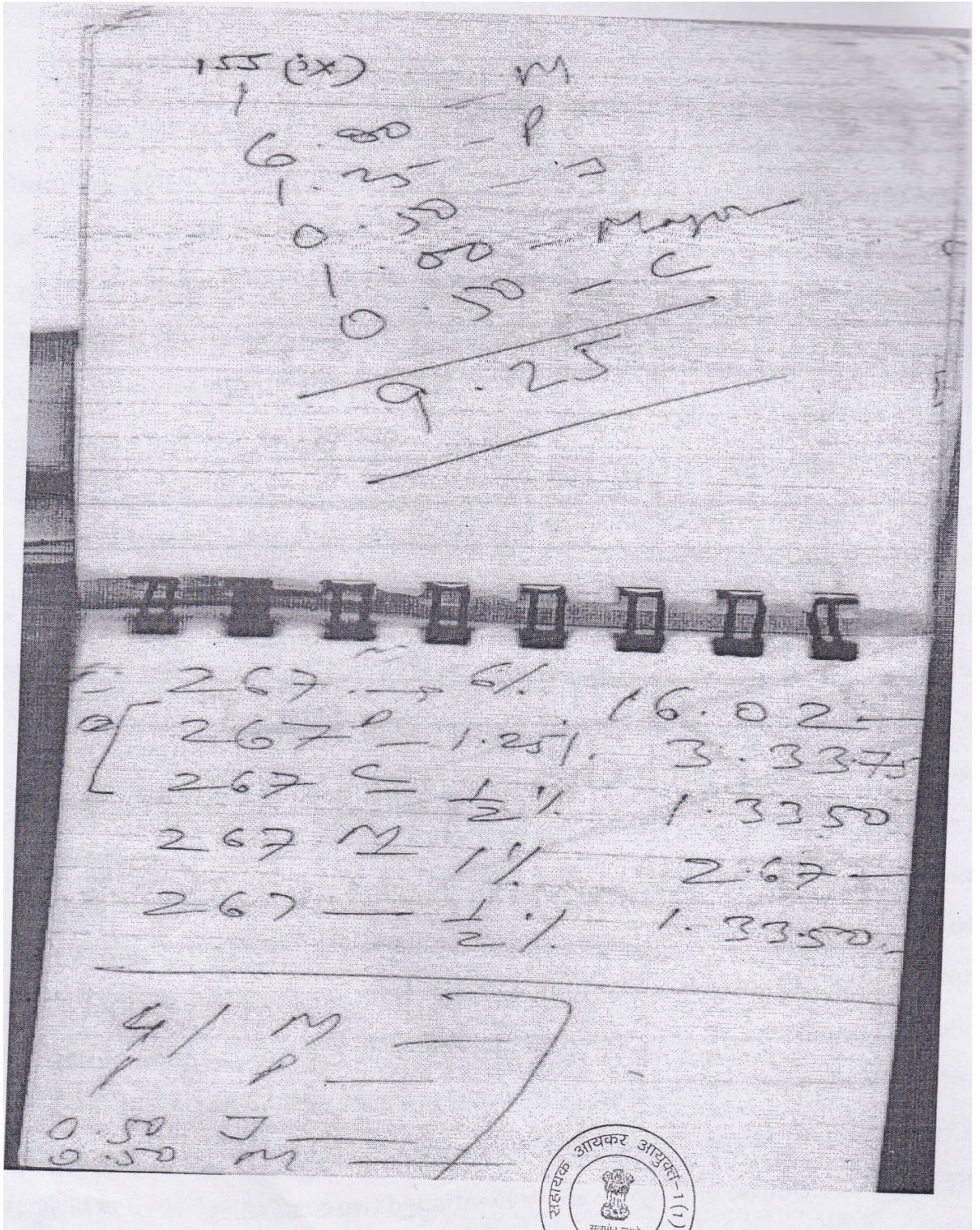
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MP High Court and Hon'ble MP High Court vide its order dated 03.11.2016 remanded the matter back to the Assessing Officer to consider and decide the objections afresh and the Assessing Officer decided the same. As per the Assessing Officer, Shri Mukesh Sharma was a contractor cum liaison agent who used to manage contracts on behalf of the State Govt. He used to play influential role in the Department of Urban Administration and Nagar Nigam, Indore. The Assessing Officer noted that the seized documents indicated that the assessee had received certain payments in facilitating the award of sewerage contracts under JNNRUM to M/s. Nagarjuna Construction Co. Ltd., Hyderabad and M/s. Simplex Infrastructure P. Ltd., Kolkata while holding the post of Commissioner, Nagar Nigam, Indore and therefore, he acted as mediator agent in providing commission to the concerned authorities for awarding the contracts. The following documents (scanned) were seized from the residence of Shri Mukesh Sharma: -

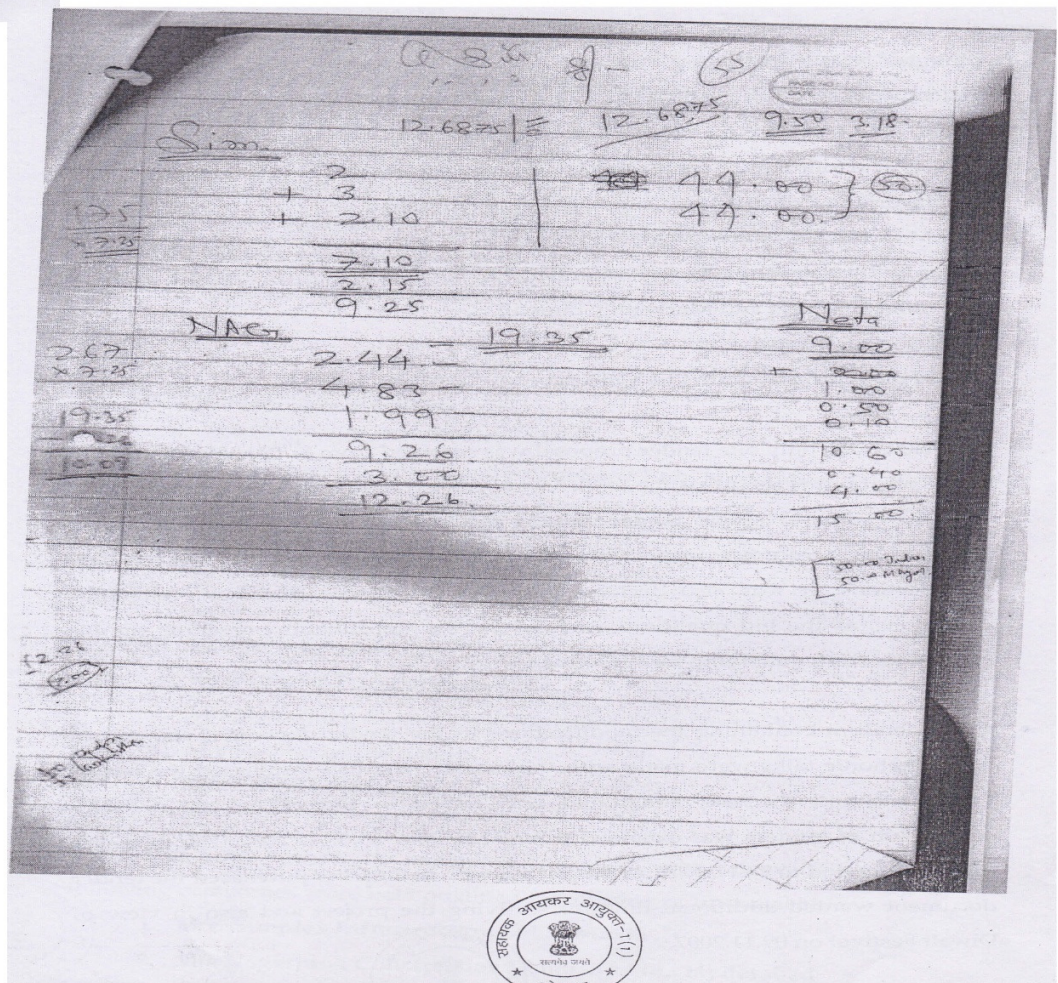
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Analysing the above seized documents, the Assessing Officer noted that letters “M”, “P”, “C” and “M” written denote the vertical chain of Govt. hierarchy involved in the ‘sewerage deal’. The Assessing

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Officer noted that “M”, “P”, “C” and “M” denote Minister of Department of Urban Development, Principal Secretary of Department Urban Development, Commissioner of Department of Urban Development and Mayor, Indore Nagar Nigam and the last “C” denotes the Commissioner, Indore Nagar Nigam. Thus, the Assessing Officer noted that all these persons played a vital role in awarding of sewerage contracts. The Assessing Officer was of the view that the last person in respect of whom “267 ---- ½ % 1.33.50” is mentioned is the Commissioner, Indore Nagar Nigam as though “C” was not written explicitly, it was clear that the missing person was the Commissioner, Indore Nagar Nigam, under whose signature, work orders were issued and who played key role in awarding contracts. Thus, the Assessing Officer noted that apart from other persons, the assessee is presumed to have received 0.5% of the total contract amount. The Assessing Officer further noted that during search operation on 06.10.2010 in the case of M/s. Nagarjuna Construction Co. Ltd., Mr. AGVK Raju offered Rs.9,68,16,275/- as income on account of unexplained expenditure to contractors, involved in sewerage project in Indore which tantamount to admission of payment of commission in the award of

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contracts. Thus, the Assessing Officer issued a show cause notice to the assessee on 19.12.2016 and the assessee contended that the papers and notings referred by the Assessing Officer did not have evidentiary value and the allegation is based on assumptions, presumptions, conjectures and surmises. However, the Assessing Officer did not agree with the submission of the assessee and held that the assessee had received Rs.1.335 crore and Rs.0.875 crore on account of illegal gratification @0.5% of the contract amount awarded to the aforesaid parties. Thus, the Assessing Officer added Rs.2,21,00,000/- to the total income of the assessee as undisclosed income. Felt aggrieved, the assessee filed an appeal before the Id. CIT(A) who having gone through the facts/circumstances, material and submissions thereof deleted the addition. The Operative part/findings recorded by the Id. CIT(A) are reproduced hereunder:

*“8. I have carefully considered the facts of the case, assessment order, remand report and the submissions made by the appellant. The appeal is decided in the succeeding **paragraphs**.*

9. It has been brought to my notice that on the basis of the same set of loose papers seized from the possession of ShMukesh Sharma, additions were also made in the case of ShNarot^{tam} Mishra, a Minister in the State Government of M.P. and ShRaghav Chandra, Principal Secretary in the Government of M.P. in their respective assessments. It is

relevant to examine the **status and fate of additions in these two cases.**

10. As in the case of appellant, in the case of ShriRaghav Chandra, same allegation was leveled on the basis of same seized papers that he was paid illegal gratification by MisNagarjunConstrUction Co. Ltd., Hyderabad and Simplex InfrastrUcture Ltd, Kolkata. A copy of the assessment order dated 30.12.2011 has been filed. It is observed that the A.O. in that case made detailed investigation and examination of the said loose papers. The A.O. also referred the matter to the Joint commissioner of Income Tax, Range u/s.144A of the Act and sought his guidance in the matter which was received on 28.12.2011. The A.O. finally concluded in the assessment order that no corroborative evidences were present in the case other than the primaryevidence i.e. diary entries. The A.O. held that the assessee could not be charged to tax on the basis of such evidence. The returned income of the assessee was therefore accepted and no addition was made.

11. Subsequently, the Ld. Commissioner of Income Tax, Bhopal examined the assessment record and formed a view that the assessment was erroneous and prejudicial to the revenue. The Ld. CIT therefore, initiated proceedings u/ s.263 of the Act. The Ld. CIT in his order passed u/s.263 on 27.03.2014 held that the assessment order passed by the A.O. was erroneous in so far as it was prejudicial to the interest of revenue The Ld. CIT concluded that the A.O. had failed to examine the details and had not conducted any enquiry in respect of seized documents regarding award of contract of sewerage line from Nagarjun Construction Co. Ltd. and Simplex Infrastructure Ltd. The Ld. CIT also held that the seized document gave a reason to believe that unaccounted gratification had been received in respect of these contracts. It was also held that the judicial precedence relied upon by the assessee were not applicable to the facts of the case. The Ld. CIT accordingly cancelled the assessment finalized by the A.O. with the direction to reframe the assessment after examining the issues and after affording sufficient opportunities to the assessee of being heard.

12. It has been further informed by AR that Shri RaghavChandra, filed an appeal before the ITAT, Indore

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against the aforesaid order u/s.263. The ITAT in its order dated 04.08.2015 in ITA No. 425/Ind/2015 quashed the said order u/s. 263 of the Act. A copy of decision has been filed by the AR. The relevant portion of the ITAT decision which has subsequently been reported in (2015) 26 ITJ 551 (Ind-Trib) is reproduced below:

13. Now looking to the above case laws and facts of the case, we are of the view that the assessee was served with details in specific questionnaire u/ s 141 of the Income-tax Act, 1961. The assessee has also given the detailed submission regarding the admissibility of diary and AO has made the enquiry from the Executive Engineer. Various bank accounts were examined in detail. No investigation or unexplained entry was found by the Assessing Officer. Details of movable and immovable properties were called for by the Assessing Officer. Nothing adverse or unexplained was found. The guidance was found from Jt. Commissioner of Income Tax u/ s 144A was duly received and kept on record. The AO has during the course of assessment proceedings made a detailed enquiry of this loose slips/ dumb loose slips found with Mukesh Sharma. All these evidences have been classified in the form of table and primary evidence and evidence has been appraised as per Income-tax Act, 1961. The AO has made the assessment as per the CBDT guidelines and as per the CBDT guidelines, in the first stage, the AO acquainted with the appraisal report and seized material and took up the case for assessment and thereafter, the AO has made the detailed enquiry and after filing the return, the AO had accepted, prima facie, acceptable evidence and he has made a proper enquiry and after making the enquiry the AO has also called for his report u/ s 144A of the Act and after getting the report of 144A, the AO has come to the conclusion that the assessee has not received any money. Whatever the documents are on the record are dumb document and on the basis of these documents, no addition can be made. We find that the Id. Commissioner has directed to collect the original file from Indore Commissioner and Bhopal Commissioner, which do not suggest anything. We found that if the AO had initially any suspicion as to primary evidence, he could have himself corrected it by taking time to conduct the enquiry into this matter. After enquiry, he arrived at the conclusion that SuspICIOn of unaccounted gratification received by the assessee by the piece of evidence found during the course of search were not adequate and sufficient to make addition.

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Therefore, we are of the view that ld. Commissioner is not justified in his action and his case is duly covered by the decision of CIT vs. AshishRajpal, 320ITR 674 (Del), wherein it is held that if during the course of assessment proceedings, if the enquiry has been made by the Assessing Officer and if the sufficient enquiry is made, then it cannot be terms as prejudicial to the interests of revenue.

14. In the result, the appeal of the assessee is allowed."

13. The AR also filed the copy of assessment order dated 29.12.2011 in the case of ShNarottam Mishra. On the basis of the same set of seized loose papers, additions of Rs. 14,24,60,600/- was made for the alleged receipt of illegal gratification from M/ s Nagarjun Construction Co. Ltd. and Rs. 15,34,1000/- from M/s Simplex Infrastructure Ltd.

14. ShriNarottam Mishra filed appeal against the aforesaid assessment. The Ld CIT (A) decided the appeal of ShNarottam Mishra vide his order dated 12.12.2012 in Appeal No. 215/11-12. A copy of the appeal order has been filed. It is seen that the Ld CIT (A) allowed the appeal and deleted both the additions holding that both these additions were not sustainable in law as the same were made only on the basis of inferences and suspicion and without substantiating any direct nexus with the appellant.

15. The department preferred appeal before the ITAT against the aforesaid appeal order of the CIT (A). The IT AT , Indore has dismissed the said appeal of the department vide its order dated 30.11.2017 in ITA No. 92/Ind/2013. A copy of order of the ITAT has been filed by the AR. The ITAT has held in the concluding para at p. 37 of the order as follows:

"On the basis of forgoing discussions we have not alternate but to hold that the Assessing Officer made additions on both the account without any basis and only on the basis of suspicion and doubts and the inferences drawn by him were also not based on the reliable evidence and material therefore we inclined to hold that the conclusion drawn by the CIT(A) on this issue does not carry any ambiguity or perversity and there is no valid reason before us to interfere with the same."

16. It has also been informed that in the case of ShriNarottam Mishra, the Ld. CIT, Bhopal also passed

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order u/ s 263 on 31.12.2012 on the ground that the assessment was erroneous in so far it was prejudicial to the interest of the revenue as the A.D. had made only part addition and not the addition of the entire amounts reflected from the papers. ShNarottam Mishra filed appeal before the ITAT against the order of CIT u/s.263. The Hon'ble ITAT, Indore in its order dated 25.11.2014 in ITA No. 83/Ind/2013 held the order of Ld. CIT u/s 263 as unsustainable in law. A copy of the decision of the ITAT as reported in (2015) 25ITJ 506 (Ind-Trib) has been filed.

17. The department filed an appeal ix] s. 260A of the Act before the Hon'ble M.P. High Court against the order of the ITAT quashing the order ss] s.263. The Hon'ble M.P. High Court dismissed the departmental appeal and held that the power exercised by CIT u/s 263 was unsustainable in law. A copy of the decision of Hon'ble High Court reported in 395 ITR 138 (M.P.) has been filed.

18. The appellant has relied upon various case laws. It IS relevant to analyze the case laws on the matter.

19. The Hon 'ble Supreme Court in the case of CBI v. V. C. Shukla&Others, reported in 3 SCC 410, has laid down that entries, notings and jottings on the loose papers/ sheets are not admissible ij]»34 of the Evidence Act and without any corroborative evidence/independent evidence as to the trustworthiness of those entries, assessee cannot be charged to tax. The Court has held that loose sheets of paper cannot be termed as 'book' within the meaning of s. 34 of Evidence Act. It has also been held therein by the Court that even correct and authentic entries m books of account cannot, without independent evidence of their trustworthiness, flx a liability upon a person. The Hon'ble Court has also observed that even assuming that the entries in loose sheets are admissible under s. 9 of the Evidence Act, to support an inference about correctness of the entries still those entries would not be sufficient without supportive independent evidence.

20. Similar view has been taken by the Apex Court in a decision in the case of Common Cause v. Union of India, 30 ITJ 197 (SC). Relevant paragraphs of the Court's decision are reproduced below:

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Para 14 of the order

"Placing implicit reliance of the decision of this Court in

C.B.I. versus V. C. Shukla (supra), it was submitted that it is open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. There being no further corroborative material with respect to the payment, no case IS made out so as to direct an investigation, and that too against large number of persons named in the documents. Such entries have been held to be prima facie not even admissible in V. C. Shukla's case. He urged that in case investigation is ordered on the basis of such documents, it would be very dangerous and no constitutional functionary/officer can function independently, as per the constitutional imperatives. No case is made out on the basis of material which is not cognizable in law, to direct investigation."

Para 16 of the order

((With respect to the kind of materials which have been

placed on record, this Court in v.c. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible"

Para 19 &20 of the order

((19. With respect to evidentiary value of regular account

book, this Court has laid down in V. C. Shukla, thus;

((37. In Beniv. BisariDayalit was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to

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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. In HiraLal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts. "

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court."

21. In T.S. Ventakesan vs. Asstt. CIT, 69 TTJ 66 (Cal), the I.T.A.T. Calcutta has held as under:

"In CBI vs. V. c. Shukla³ SCC 410 - the Hon'ble Supreme Court has held that loose sheets of paper termed as 'book' within the meaning of s. 34 of Evidence Act. It has also been held therein by the Hon'ble Supreme Court that even correct and authentic entries in books of account cannot, without independent evidence of their trustworthiness, fix a liability upon a person. The Hon'ble supreme Court also observed that even assuming that the entries in loose sheets are admissible under s. 9 of the Evidence Act to support an inference about correctness of the entries still those entries would not be sufficient without supportive independent evidence. In *Am^{ar} Singh vs. ITO (1995) 53 TTJ (Del) 692 : (1995) 54 ITD375 (Del)* it has been held by Delhi Bench of Tribunal that a statement made by a person in

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assessment proceedings relating to SLBP will not be relevant evidence under s. 33 in the assessment proceedings relating to a party different from SLBP. In Rama Traders vs. First ito(19⁹⁸) 32 TT J (pat) 483 : (1998) 25 rro599 (pat) the Patna Bench of Tribunal has held that the onus for proving the correctness of the entries appearing in the books of third party M/ s Raj Trading Co. was not on the assessee, but on the Revenue. It was also held that presumption under s. 132(4A) could not be raised against the assessee who was a third party and additions to the assessee's income could not be made. In Kishin Chand Chellaram vs. crt(1980) 19 CTR (SC) 360 : (1980) 125 n» 713 (SC) it has been held that though proceedings under rraAct are not governed by strict rules of evidence and the letter could be taken into account as evidence even without calling manager of the bank in evidence to prove his letter, but before the rrauthorities could rely on the letter they are bound to produce letter before the assessee that the assessee could controvert the statement contained in it by asking for an opportunity to cross-examine the manager of the bank. "

On the basis of a mere entry on a loose sheet found from the possession of a third person and a statement given by another third person zn connection with search/ assessment proceedings of still another third person without the copy of the statement being furnished to assessee and thereby allowing the assessee an opportunity to rebut the contentions made therein as also to cross-examine the witness it cannot justifiably be assumed/ inferred that the amount mentioned in the entry on loose sheet was paid to the assessee. In tum the Tribunal deleted the addition.

In our considered opinion, it may hardly be deniable that the Indian Evidence Act or for that matter the statutory provisions of the Indian Evidence Act may not be applicable strictly to the proceedings under the IT Act but the basic/ broad principles of the law of evidence do apply to the said proceedings. It is a settled position of law that the slips or loose sheets do not fall within the purview of 'book'. An entry in a book of accounts, maintained in the regular course of business, is relevant to be considered in respect of the transactions reflected thereby, no doubt, but is not conclusively decisive thereof or of the matter contained therein or liability reflected thereby, and much less so an entry in a loose sheet. It is only some other evidence, whether in the form of .statement of the author of the entry or the statement

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of 'some other person connected with the transactions **contained in the entry, or in some other form, supportive** of the entry, which lends weight/ credence to the entry in **the book, depending upon the trustworthiness of the said** deponent or reliability of the said other evidence, and it is only then that the said entry assumes the nature of a **reliable evidence on the basis of which some addition can be made/ sustained. An entry in a loose sheet is of a still** feeble nature, and an entry in a loose sheet found in the possession of another/third person is much more so. As **such a mere entry in a loose sheet, by itself, without the sworn statement of the related person, supportive of the entry, hardly has any evidentiary value, worth the name. The legal position being as emerging above, we are of the considered opinion that no liability can be fastened nor can an addition be made on the basis of a mere entry in a loose sheet without there being some further trustworthy/ reliable corroborative evidence lending credence to such an entry."**

22. The ITAT, Pune in the case of Chander Mohan Mehta Vs. ACIT (Inv) 65 TTJ 327 (Pune) held that where the loose papers do **not indicate the name of the assessee, therefore, the loose papers** themselves lead to no conclusion and have no evidentiary value.

23. In the case of ACIT v. SatyapalWassan295 !TR 352, the Jabalpur !TAT has held that addition are not sustainable where paper are not containing any details to indicate nature of transaction, period of transaction, persons involved or code for deciphering figures and assessee denying knowledge and filing affidavit to indicate transactions related to somebody else. It has been further held that document must be speaking document and **no addition is permissible on basis of dumb document.**

24. The ITAT Chennai Bench in the case of M.M. Financiers Pvt Ltd Vs. DCfTreported in 107 TTJ 200 (Chennai) held that no addition could be made in the hands of the assessee on the basis of the dumb loose slip seized from his residence, in the absence of any corroborative material.

25. The ITAT, Delhi in the case of S.K. Gupta v DCIT reported in 63 TTJ 532 (Del) has held as under :-

« The basis of addition in this case IS a seized paper

relating to purchase/sale of property. The document bears the caption "Estimates". There seems some truth in the explanation of the assessee where it is alleged that the entries relate to some futuristic planning. Since the assessee is carrying on the business of estate agent, in the process of this business, he is required to discuss various plans, projects and proposals with various parties like brokers, builders, etc. These discussions generally take place before a project for purchase of development, plans are discussed as the assessee acts as an agent on behalf of the buyer or seller. Therefore, notings on the piece of paper do not indicate the actual transaction. The paper in question does not indicate that any transaction had ever taken place because it does not contain any information as to what was the nature of transaction. If at all, any such transaction took place for the parties to the transaction, what was the date of the transaction, what did the figure noted on the piece of paper represent, and whether in any manner the paper in question has any relevancy to the determination of the income in the hands of the assessee. No evidence has been brought on record to corroborate the allegation that the assessee had entered into any transaction or had earned any income. There was no evidence to show that there was any undisclosed investment or any sale of any property for the amount as given in this piece of paper. The assessee has alleged that the properties in question were not sold during that period. These properties were sold after the date of the search. This fact has not been controverted by any material or evidence on record. Therefore, there was no question of any income arising from sale of these properties at the time of search. There is no material that the sale of this property took place earlier and the assessee had earned any income. It is alleged by the assessee that the acquisition of the said property as well as sale thereof was duly disclosed in the return of income of the company owner and the assessment of the said company had been duly completed without any dispute. Particulars of acquisition and further investment in the property in question are placed on the paper-book and particulars of sale which took place after search are also placed. No material has been brought on record by the Department to come to the conclusion that the property belonged to the assessee and the figure mentioned in the seized paper could be treated as the income of the assessee. Similarly, it is alleged by the assessee that other

property belongs to the company A Ltd., which is also an independent entity and its assessment is completed under s. 143(3) and under s. 158BC and no additions were made there. The Department could not controvert this allegation by any material on record. Some jottings were found on the piece of paper, from which it could not be presumed that any purchase or sale has taken place with regard to these properties. The AD has not raised any dispute regarding the facts about the properties standing in the names of R. Ltd. and A. Ltd. Therefore, no corroborating evidence is brought on record to corroborate the conclusion that the assessee has entered into any transaction or had earned any income. The AO himself has mentioned that the paper in question is a bald estimate. Therefore, unless there is a corroborating evidence to show that the purchase and sale of these properties has taken place and the assessee has earned income, no amount can be added in the hands of the assessee. The Department had not brought on record any evidence conclusively that the seized documents contained details of sale of properties and profit earned, which was chargeable to tax. On the other hand, the assessee has now brought on record that no such sale of these properties had taken place prior to the date of search. No doubt the seized papers contained statement, the figures of which appeared to be certain unnamed transaction but there was nothing either in law or in logic to warrant the conclusion that the figures noted therein pertain to sale of properties and secret profits. Thus, going merely on the basis of the seized paper and nothing more, it could not be predicated that what was shown in the paper was secreted profits and sale proceeds. In other words, the details contained in the seized papers did not by themselves represent a preponderance of probabilities so as to support the Department's case that what was shown was taxable income. As the AO had not given any reasoning or finding or had not mentioned any evidence or material as to how and on what basis the figures were considered as income. Contrary to that as there was no sale of the properties, it was clear that he had not invoked any deeming provisions. The Revenue can tax only those receipts which must have been proved to be income in the hands of the recipient. Therefore, it is the Revenue's onus to prove, if the assessee had received any income. Therefore, it is the Revenue's onus before assessing any receipt as taxable income to prove that the receipt in the hands of the

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recipient is income and this can be proved or established only on the basis of some material or evidence.

26. In J.R.c. Bhandari vs. ACIT ,79 TTJ 0001, the ITAT Jodhpur has held as under:

"It may hardly be deniable that the Indian Evidence Act or for that matter the statutory provisions of the Indian Evidence Act may not be applicable strictly to the proceedings under the IT Act but the basic/ broad principles of the law of evidence do apply to the said proceedings. It is a settled position of law that the slips or loose sheets do not fall within the purview of 'book'. An entry in a book of accounts, maintained in the regular course of business, is relevant to be considered in respect of the transactions reflected thereby, no doubt, but is not conclusively decisive thereof or of the matter contained therein or liability reflected thereby, and much less so an entry in a loose sheet. It is only some other evidence, whether in the form of statement of the author of the entry or the statement of some other person connected with the transactions contained in the entry, or in some other form, supportive of the entry, which lends weight/ credence to the entry in the book, depending upon the trustworthiness of the said deponent or reliability of the said other evidence, and it is only then that the said entry assumes the nature of a reliable evidence on the basis of which some addition can be made/ sustained. An entry in a loose sheet is of a still feeble nature, and an entry in a loose sheet found in the possession of another/ third person is much more so. As such a mere entry in a loose sheet, by itself, without the swam statement of the related person, supportive of the entry, hardly has any evidentiary value, worth the name. The legal position being as emerging above, no liability can be fastened nor can an addition be made on the basis of a mere entry in a loose sheet without there being some further trustworthy/ reliable corroborative evidence lending credence to such an entry. "

27. Hon 'ble Delhi High Court in the case of CIT v. S.M.Agarwal(2007) 293 ITR 43/47 (Del) has held as under :-

«It is well settled that the only person competent to give evidence on the truthfulness of the contents of the documents is the writer thereof So unless and until, the contents of the documents are proved against a person,

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the possession of document or handwriting of that person on such documents by itself cannot prove the contents of the documents. ":

28. In Atul Kumar Jain Vs. DCIT reported in 64 TTJ (Del) 786, the ITAT Delhi has on the issue of notings and jottings held as under:

«6.4 We find that the AD has made out the case for making such addition based exclusively on the said piece of paper found and seized during the course of search. It is, therefore, to be examined whether the said paper found and seized is a document having evidentiary value to prove the fact of the transaction. The word "document" has been defined in s. 32 of the Indian Evidence Act to mean-any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter. The word "document" has also been similarly defined in the General Clauses Act. The meaning of the word "describe" used in the definition as given in the New Shorter Oxford English Dictionary is "portray in words, recite the characteristics of, in a detailed or graphic account of The meaning of the word "express" used in the definition as per the New Shorter English Dictionary is "A graphic representation as image; an act of expressing or representing by words, signs or actions, expressions, a mode of speech, of phrase; an utterance. According to the Hon'ble Supreme Court in the case of RamjiDayawala& Sons (P) Ltd. vs. Invert Import AIR 1981 SC 2085, mere proof of the handwriting of a document would not tantamount to a proof of all the contents or the facts stated in the documents, if the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the fact or contents of the document. The truth or otherwise of the fact or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue. "

29. In CIT Vs. TilakrajAnand373 ITR 1 (Del), the Hon'ble Delhi High Court has held as under :-

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"in absence of dates mentioned in the concerned pages of seized notes, no addition would be made since no particular amount was attributable for a specified year".

30. *In ACIT Vs. Dr. Kamla Prasad Singh (2010) 3 ITR (Trib) 533/ 563 (Pat), the ITAT Patna has held as under :-*

"It is also settled law that any document found and seized during the course of search has to be interpreted literally and nothing can be added or subtracted. If facts of the assessee's case before us are evaluated in the light of the aforesaid settled principles of law, it will be revealed that the documents found and seized and relied upon for making the addition under appeal by the Revenue have neither date nor the name of the assessee and therefore, it cannot be assumed or presumed as to when and by whom the notings were recorded. It is also not known as to in what connection the notings even if considered as giving and taking-of money were made; meaning thereby that these documents being dumb documents, no addition can be made on the basis of assuming or presuming the notings in those documents relating to any other transaction nor recorded in the documents. "

31. *In the case of Nem Chand Daga v ACIT 1 SOT 515 it was held that, Whether entries found in loose papers can have any authenticity or evidentiary value in itself - Held No. Whether where assessee claimed that he did not receive any money and opposite party concerned also confirmed assessee's version, assessing officer could give any significance to scribbling in loose sheets - Held No.*

32. *In the case of S.P.Goyal v. DCIT 82 ITD 85 (Mum) (TM) it was held as follows:*

Whether as it was a mere entry on loose sheet of paper and assessee claimed that it was only planning, not supported by actual cash, then there had to be circumstantial evidence to support that entry really represented cash- Held yes. Whether where no such evidence found in the form of extra cash, jewellery or investment outside book, explanation offered by assessee could not be rejected - Held yes. Whether addition made was on mere suspicion without any corroborative evidence and had to be deleted- Held yes.

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33. In the case of CIT v. MaulikkumarK Shah 307 ITR 137 (Guj) , Hon'ble Gujarat High Court has held that additions made by the AO towards "on money" on the basis of seized paper alone without any corroborative evidence cannot be sustained.

34. Hon 'ble Delhi High Court in the case of CIT v. KulwantRai291 ITR 36 (Delhi) has held that no addition can be made based on surmises and guess work.

35. Hon'ble Delhi High Court in the case of CIT v. D.K. Gupta 308 ITR 230 (Del) has held that since there is no corroborative or direct evidence to presume that the notingsjottings had materialized into transactions giving rise to income not disclosed in the books by the assessee, the department's presumption cannot be tenable in law.

36. In the case of ACIT v. SatyapalWassan295 ITR 352, Jabalpur ITAT has held that addition is not sustainable where paper is not containing any details to indicate nature of transaction, period of transaction, persons involved or code for deciphering figures and assessee denying knowledge and filing affidavit to indicate transactions related to somebody else. It has been further held that document must be speaking document; no addition is permissible on basis of dumb document.

37. In the case of CIT vs. Ram NarairiGoel, 224 ITR 180, the Hon'ble P &H High Court has held that suspicion, however strong, cannot take the place of evidence or proof. Similarly, the Hon'ble P &H High Court in the case of CIT vs. FaqirChamanLal, 262 ITR 295 has held that it is a well settled proposition that the presumption howsoever strong cannot substitute evidence.

38. In AmritlalNatwarlalVs. ACIT reported in 57 TTJ 454/482 (Ahd) in the loose paper, the year was not mentioned although date &month were mentioned. The ITAT held that as no year is mentioned, therefore, there is no basis for making addition in A.Y. 1989-90.

39. In ACIT v. Dr. Kamla Prasad Singh, 3 ITR (Trib) 533 (Pat-Trib) it was held as under :-

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(C •••• it is also settled law that any document found and seized during the course of search has to be interpreted literally and nothing can be added or subtracted. If facts of the assessee's case are evaluated in the light of the aforesaid settled principles of law, it will be revealed that the documents found and seized and relied upon for making the addition under appeal by the Revenue have neither date nor the name of the assessee and therefore, it cannot be assumed or presumed as to when and by whom the notings were recorded. It is also not known as to in what connection the notings even if considered as giving and taking-of money were made; meaning thereby that these documents being dumb documents, no addition can be made on the basis of assuming or presuming the notings in those documents relating to any other transaction nor recorded in the documents. "

40. In Atul Kumar Jain v. DCIT reported in 64 TTJ 786 (Del) it was held that AO was not justified in deciphering the figures on a seized paper at his whims and caprice based on unfounded ypresumptions and conjectures without bringing any corroborative material evidence in support thereof and same cannot form the basis for assessing undisclosed income by way of sale proceeds of a property.

41. In this case additions have been made on the same set of loose papers on which the assessments have been made in the case of ShRaghav Chandra and ShNarottam Mishra on the same ground that the appellant has received certain payments from Nagarjun Construction Co. Ltd. and Simplex Infrastructure Ltd. In the appellant proceedings, the additions in both the cases have been deleted on the ground that the said seized documents did not have evidentiary value and the assessments were based on assumptions, conjectures and surmises.

42. The loose papers which are the basis of addition are not in the handwriting of the appellant. The papers are undated and do not reflect as to which period they pertain. The papers have not been seized from the possession of the appellant. The loose papers also do not anywhere reflect the name of the appellant. The appellant has categorically denied that he never received any such payments. The A.O. has not brought any positive material

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on record in the form of statement of some responsible person of Simplex Infrastructure Ltd, Kolkata, to the effect that the company had made payment to the appellant. There is also no statement of Mr. Raju of Nagarjun Construction Co. Ltd. that the appellant was paid any money by the company. Further, even Mr. Mukesh Sharma has not stated that he had paid any money to the appellant. Thus, no positive or cogent material has been brought on record to prove that the appellant was paid certain money by the Nagarjun Construction Co. Ltd. and Simplex Infrastructure Ltd. Further, in the assessment of the appellant, no unexplained investments have been found.

43. The A. D. has given following finding at page 13 of the assessment order:-

"The last person being referred is Commissioner, Nagar Nigam, Indore i.e. the assessee. Though "C" is not written explicitly, it is clear that the missing person is Commissioner, Nagar Nigam, Indore under whose signature, work orders were issued and who paid a key role in award of contract. He is presumed to receive 0.5% of the total contract amount."

43.1 The A.D. himself records finding that in this case even "C" is not written explicitly which would have led the A.D. to draw inference that the same referred to the Commissioner, Nagar Nigam. From the above, it is clear that the A.D. has drawn inferences only on basis of his subjective imagination, assumptions, conjectures and surmises. The name of the appellant is not there in the seized papers. His name is not there even in the coded form. No corroborative evidences have been brought on record by the A.D. In my considered opinion, simply on the basis of jottings and notings on some undated dumb papers seized from the possession of a third party, additions cannot be sustained in law without any corroborative evidence and without any cogent, incriminating and positive material. It is now a settled law that notings, jottings on the loose papers have no evidentiary value in absence of corroborative evidences.

44. In view of the judicial decisions in the cases of ShriRaghav Chandra and ShriNarottam Mishra and considering the fact that no addition was made by the A.O. in the case of ShriRaghav Chandra and the order ii] s 263

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of the CIT has been quashed by I the ITAT and also that the additions made in the case of ShriNarottam Mishra have been finally deleted by the ITAT, the addition made in this case on the basis of same seized papers cannot survive. Following the position of law as laid down in the judicial decisions discussed above, it is to be concluded that the aforesaid loose papers found and seized from the premises of Mukesh Sharma have no evidentiary value in absence of any cogent, incriminating or positive corroborative material for the purpose of the assessment of the appellant.

45. In view of the totality of facts and circumstances and various judicial decisions discussed above including the decisions in the case of ShriRaghav Chandra and ShriNarottam Mishra, I hold that the addition of Rs. 2.21 crores is unjustified and unsustainable both in law and also on facts. The same is therefore, deleted.

46. As the addition has been deleted on merits, I do not find it necessary to adjudicate grounds of appeal challenging the procedural aspects including reopening of assessment u/s 147 of the Act.

47. In the result, the appeal is allowed.”

5. Ld. CIT-DR relied upon the order of the Assessing Officer and submitted that the Assessing Officer has, on the basis of analysing the documents seized from the residence of Shri Mukesh Sharma, rightly formed the view that the assessee has illegally been paid gratification at Rs.2,21,00,000/- by the aforesaid two companies. Therefore, the order of the ld. CIT(A) is unjust and improper which needs to be reversed. On the other hand, ld. Counsel for the assessee relied upon the order the ld. CIT(A) and submitted that the assessee never received any payments from the said two companies

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as the documents seized do not show in any manner that the assessee has been paid by these two companies. The Assessing Officer made the addition simply on the basis of presumption. Further, ld. Counsel for the assessee also relied upon certain judicial pronouncement as detailed in the paper books filed before us and submitted that view drawn in these judicial pronouncements supports the order of the ld. CIT(A). Hence, the order of the ld. CIT(A) is justified.

6. We have heard rival contentions of both the parties and perused material available on record. From the perusal of the seized documents in question, it is clear that despite the “C” alphabet is not there in the seized documents, the Assessing Officer simply presumed that the missing “C” is nothing but its Commissioner, Indore Nagar Nigam (Assessee) and also presumed that the assessee received the money. Therefore, the findings of the Assessing Officer are solely based on assumptions and presumptions and without any concrete evidence, legally admissible in law. The Assessing Officer had no evidence whatsoever to show that there was any receipt of money by the assessee. He is also bound to prove and

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named the person who gave the money and on what date the money was given but in this case, there is no positive and concrete evidence with the Assessing Officer to prove the receipt of money from the said two companies by the assessee.

6.1 We find that in the case of Ashwin Kumar vs. ITO (1991) 39 ITD 183 (Del), the Tribunal held that *“when a dumb document, like the present slip, is recovered and the revenue wants to make use of it, it is the duty of the revenue to collect necessary evidences which may provide acceptable narration to the various entries. The evidences collected should be such that any reasonable man would accept the hypothised advanced by the revenue, that the figure written on the right side of the slip represent incomes earned by the assessee. It was conceded by the Departmental Representative that no such evidence have brought out on record.*

6.2 Hon’ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd V/s CIT 1954 261 ITR 775 held that *“in making assessment u/s 23(3) of the Indian Income Tax Act, the ITO is not fractured by technical rules of evidence and fluctuations and he is entitled to act on material which may not accept an evidence in the*

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court of law, but the it is not entitled to make and power comes and making assessment without reference to any evidence or any material delivered. There must be something more than more where suspicion to support the assessment u/s 23(3)". The rule of law on this subject has been fully and rightly stated by Hon'ble High Court in the case of Sree Shanmugar Mills Ltd v/s Commissioner of Income Tax, Punjab 1944 12 ITR 393. Similar view was also taken by Delhi Tribunal in the case of Bansal Strips V/s ACIT (supra) observing that "the A.O cannot first make certain conjectures and surmises and thereafter deemed provisions based on such conjectures and surmises". In the absence of material as to the nature of ownership of the transaction, undisclosed income cannot be assessed in the hands of the assessee summarily by arithmetically total various figures dotting down on the loose document. Any other seized for the purpose of exercising to deemed provisions dumb documents order documents with no certainty for no evidential value".

6.3 Hon'ble High Court of Delhi in the case of CIT V/s Anil Bhalla (2010) 322 ITR 191 (Del) also held that *"when no independent*

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material or evidence has been brought on record by the A.O to establish that the notices of jottings of loose sheets or on the paper written on accounted transactions cannot be made”. Hon’ble High Court of Gujarat in the case of CITV/s Maulikumar K Shah 2008 307 ITR 137 has held that “the additions made by the A.O on the basis of seized paper alone without any corroborative evidence could not be sustained”.

6.4 Further, we find that the same issue has been dealt with by ITAT, Indore in the case of ACIT vs. Narottam Mishra (2018) 32 ITJ 510 (Trib. – Indore) wherein on the identical facts and circumstances, the Tribunal deleted the addition made on account of money allegedly received from two companies. The relevant portion of the order dated 30.11.2017 of the Tribunal is reproduced hereunder:

25. On careful consideration of above rival submissions and perusal of the material placed on the record of the Tribunal inter-alia assessment order, impugned order, paper books filed by the assessee and case-laws cited and relied on at Bar by the parties, at the very outset, from the assessment order, we observed that the Assessing Officer made first addition on account of alleged proceeds received from NCCL by drawing adverse inference against the assessee on the basis of primary evidence no. 1 to 8 (assessment order pages 2 to 11) listed in the table of primary evidence no.1 which are documents relating to request for transfers and postings of officers and request for fund allocations in the Urban Development Department, documents relating to incurring of expenditure for travel and officials, documents relating to illegal gratifications paid to officers of Urban

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Development Department and documents relating to tenders/contracts of various Nagar Nigams, Nagar Palikas. Primary evidence nos.2 to 8 are loose papers collected from the residence of Mukesh Sharma during search and seizure operation u/s 132 of the Act at his office and residence. The Assessing Officer has also taken into consideration corroborative evidence Sl. No. 1 to 5 (assessment order pages 11 to 28) and thereafter, he proceeded to make addition by referring to the sec. 34 of the Evidence Act and referring to the guidelines established by the Hon'ble Supreme Court in the case of CBI vs. VC Shukla (supra).

26. In the tables of primary and corroborative evidence, the Assessing Officer firstly in sl. No.1 of primary evidence noted the details of documents and thereafter, after mentioning the queries raised to the assessee, directly jumped to the conclusion by holding that from the documents seized through search action against Mukesh Sharma u/s 132 of the Act, it is found that he was an intermediary for facilitating work from the ministers and officers of the department of Urban Development Department and Shri Mukesh Sharma has been found to be liasioning intermediary for the practice of transfers and postings and fund allocations. But, there is no adjudication regarding explanation and reply of the assessee to the queries of the Assessing Officer. Further, on primary evidence no.2 to 8, the Assessing Officer noted that the details of loose papers and thereafter, for primary evidence no.2, he himself put meaning to word "M" and "Netaji" that these have been used by recording the name of the assessee by Shri Mukesh Sharma on standalone basis without any other corroborative or other adverse evidence supporting this abbreviation and meaning taken by him on his own whims and fancies. By giving meaning to word 'M' and 'Netaji', the Assessing Officer made a presumption and drew an inference that Shri Mukesh Sharma was an intermediary through whom the assessee received proceeds/gratifications from NCCL which was further used for the purpose of making investment in the land through benamidars.

27. When we analyzed the basis taken by the Assessing Officer for making second addition on account of proceeds and cash found in the lockers and possession of Shri Usman Khan, which were alleged proceeds from SIL then we found that the basis of this addition is primary evidence no.1 to 5 and corroborative evidence no.7. As we have noted above primary evidence no.1 which are documents relating to request for transfers and postings of officers and request for fund allocations in the Urban Development Department, documents relating to incurring of expenditure for travel and officials, documents relating to illegal gratifications paid to officers of Urban Development Department and documents relating to tenders/contracts of various Nagar Nigams, Nagar Palikas. Primary evidence nos.2 to 8 are loose papers collected from the residence of Mukesh Sharma during search and seizure operation u/s 132 of the Act at his office and residence. So far as corroborative evidence no.7 is concerned, it is warrant of authorization

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against Shri Usman Khan under search operation Rs.73,41,000 was found and seized from locker no.268 at Axix Bank, Rs.21 lacs from locker no.151 at Bank of Rajasthan and Rs.20 lacs found and seized from locker no.137 at Bank of Rajasthan, Urja Bhavan, Bhopal. The Assessing Officer also noted in the post search inquiry that Shri Usman Khan had jointly purchased house at Arera Colony, Bhopal with mother-in-law of the assessee Smt. Rati Devi Gurbele and on this purchase of house account, the Assessing Officer made addition of Rs.20 lacs which resulted into total addition of Rs.1,53,41,000/-.

28. In the backdrop of above factual matrix of the evidence relied and taken into consideration of the Assessing Officer, when we logically analyse the conclusion drawn by the Id. CIT(A) on the touch stone of the relevant provisions of the Act, Evidence Act, and other relevant provisions of law in the light of the ratio of the decisions/orders relied by the both the parties then we find that the Id. CIT(A) has taken into consideration all the relevant facts and circumstances of the case and also taken into consideration the basis of the presumption and inferences drawn by the Assessing Officer for establishing direct or indirect nexus of the assessee with the documents found and seized from Shri Mukesh Sharma and cash and documents seized from Shri Usman Khan and thereafter the First Appellate Authority dismissed findings of the Assessing Officer.

29. The CIT(A) observed that the papers which were taken basis for making addition in the hands of assessee were found during the search and seizure operation in the premises of Shri Mukesh Sharma and they were not in the handwriting of appellant. It was also correctly observed that though the persons in whose names the investment were made were belonging to the Dabra, the election constituency of the assessee – appellant but they were neither relatives nor employees nor connected in manner with the assessee and on this basis it was concluded by the first appellate authority that in absence of any direct supportive evidence the inference drawn by the Assessing Officer that those persons hail from Dabra and therefore they are benamidars of the appellant is a bais conclusion against the appellant. We are in agreement with the conclusion of the CIT(A) that to hold the persons as benamidar of the other person it needs to be established that the another person who is not in front of transaction is the ultimate beneficiary and enjoying the fruits of the transaction/venture and this fundamental requirement is missing in this case as there is no sufficient reliable evidence or material against the assessee which could show and establish that the persons in who's name investment have been made are benamidars and the assessee and none else is the ultimate beneficiary enjoying the fruits of the investment. In absence of bringing out any such facts on record the Assessing Officer proceeded to draw inference against the assessee and thus we have no hesitation to hold that the CIT (A) was correct in dismissing the same.

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30. The Ld. Senior Counsel has placed reliance on the decision of Hon'ble High Court of Delhi in the case of CIT Vs Gian Gupta (Supra) where in it was held that when no evidence has been brought on record by the Assessing Officer that there is any investment and there is any transfer of cash than there is no any question of investment when the land has not been transferred and registered in the name of alleged assessee. In this case their Lordship held that the CIT (A) and the Tribunal have rightly deleted the addition on examination of the fact. In the present case also the presumption drawn by the Assessing Officer against the assessee was based merely on surmises and conjectures without having any reliable evidence on record to show that investment has been made by the assessee in the name of benamidars and without establishing the movement and transfer of cash from the assessee or on his behalf by any other person. Therefore ratio of this decision supports the conclusion of CIT(A).

31. The Ld. Senior Counsel has also placed reliance on the decision of I.T.A.T., Hyderabad in the case of DCIT Vs M. Aja Babu in ITA 1755,1756 & 1757/HYD/2012, dated 23/04/2014 wherein the Tribunal referring to the decisions of Hon'ble High Court of Delhi in the case of CIT vs Anil Bhalla (supra), CIT Vs Dinesh Jain (HUF) 211 Taxman 23 (Del) and CIT vs Jaipal Aggarwal 212 Taxman 1 (Del), ITAT Mumbai in the case of ACIT vs. JP Morgan India Pvt. Ltd. 46 SOT 250 (Mumbai). It has been held that the addition made by the Assessing Officer based on loose papers which is not a conclusive evidence therefore such evidence is not sufficient for making addition. In this case the observations of the Tribunal read as follows: -

“we have heard the arguments of both the parties, perused the record and have gone through the orders of the authorities below. In this case, the addition was made by the Assessing Officer based on the loose paper and the same, in our view, cannot be considered as conclusive evidence. As held by the CIT(A) in the impugned order “except relying, the nothings in the loose slips, no attempt has been made to corroborate the notings with independent evidence. The parties to the ‘transaction particularly the vendor has not examined. In every transaction there is a circle concerning two parties. It is not known whether the vendor has disclosed the consideration as noted in the diary. Therefore, merely on the basis of presumption and some corroborated notings additions cannot be made.” In our opinion, the deletion of addition by the CIT(A) is justified and no interference is called for in the order of the CIT(A). The following cases support the action of the CIT(A):

1. CIT Vs Anil Bhalla [2010] 322 ITR 191 (Del) – wherein held that the notings recorded on the loose sheet of paper do not represent any expenditure incurred by the assessee director and that the entries related to the company in as much as the assessee could explain from

the books of the company that these projects were undertaken by it, and upheld the deletion of the impugned addition under s. 69C, findings arrived at by the Tribunal are pure findings of facts and the same do not warrant any interference.

2. ACIT Vs J. P. Morgan India (P) Ltd [2011] 46 SOT 250 (Mum)

3. CIT Vs Dinesh Jain HUF [2012] 211 Taxman 23 (Delhi)

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4. *CIT Vs Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi) – wherein it was held that Dumb documents seized, i.e. from which nothing could be clearly understood, cannot form a justified base for making additions to income of the assessee.*

17.1 *In view of the above discussion, we are of the view that the addition made by the Assessing Officer based on the loose paper, which is not a conclusive evidence and, therefore, the same is not sufficient to make the addition. In our opinion, 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 made investments in land. Noting on the note book/diary/loose sheets are required to be supported/corroborated by other evidence and should 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. The vendor has not examined in this case. Therefore, we do not find any infirmity in the order of the CIT(A) in directing the Assessing Officer to delete the addition made on the basis of loose paper and the order of the CIT(A) is hereby upheld dismissing the grounds raised by the revenue on this issue.”

32. *In the present case vendor/sellers has not been examined and there is not evidence, documents, admission or averment by the alleged persons that they were instrumental or used by the assessee for making investments in purchase of lands. Per contra, these persons have denied such transactions on affidavit and in their statements recorded by the lower authorities. At this juncture it is also relevant to take note of the ratio of the decision of Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of Prakashchand Nahata Vs CIT, 301 ITR 134 MP. In the case of ACIT Vs Satyapal Wassan 295 ITR 352 (Jabalpur I.T.A.T.) as relied by the Ld. Senior Counsel where in it was held by the Coordinate Bench that the addition is not sustainable where paper not containing any details to indicate nature of transaction, period of transaction, persons involved or code for deciphering figures and assessee denying knowledge and filing affidavit to indicate transactions related to somebody else. It has been further held that document must be speaking document; no addition permissible on basis of dumb document which is also a situation in the present case where the Assessing Officer has relied on the loose sheets/papers without any other corroborative evidence or material against the assessee.*

33. *In the case of CIT Vs Anil Bhalla (Supra) it was held that when no independent material or evidence has been brought on record by the Assessing Officer to established that the noting/jottings recorded in the loose sheets or on the paper represented alleged unaccounted transaction, then the CIT (A) was right in accepting the explanation of the assessee. It was also held that the Tribunal was right in holding that loose papers do not represent any expenditure on investment incurred by the assessee then the findings of the Tribunal do not warrant any interference.*

34. In the case of CIT Vs Girish Choudhary the Hon'ble Delhi High Court held that when there was no material on record to show on what basis the Assessing Officer had reached to the conclusion that the figure '48' was to be read as Rs. 48 Lakh, then the document recovered during the course of search was a dumb document and led nowhere. The relevant observations and conclusion of their Lordship read as under: -

"Hence, in the present case there is no material on record to show as to on what basis the Assessing Officer has reached at the conclusion that the figure "48" is to be read as Rs. 48 Lakhs. The apex court in Central Bureau of Investigation Vs. V. C. Shukla (1998) 3 SSC 410 has laid down that: -

"File containing loose sheets of papers are not book and hence entries therein are not admissible under section 34 of the Evidence Act, 1872." Similarly, the document annexure A-37 recovered during the course of search in the present case is a dumb document and lead us nowhere. Thus, the Tribunal rightly deleted the addition of Rs. 48 lakhs made by the Assessing Officer on account of undisclosed income on the basis of seized material.

35. The Ld. Senior Counsel has also placed reliance on the recent decision of Hon'ble Supreme Court in the case of Common Cause Vs Union of India (Supra). In the present case also the Assessing Officer without any basis proceeded to provide meaning to the word "M" and "Netaji" as these words denotes to the assessee but there is no basis for making such inference against the assessee as neither the Assessing Officer nor the Ld. CIT, DR controvert this fact that the assessee is popular within his private and political circle as "DADA" which means elder brother therefore meaning given by the Assessing Officer to above words for making inference against the assessee and for establishing direct or indirect nexus with the loose papers is baseless and without any supportive evidence which cannot be taken as reliable basis for drawing inference against the assessee. Furthermore, loose papers which were found and seized from the premises of other persons i.e. Shri Mukesh Sharma and written by Shri Sharma only then on the basis of such loose papers no valid inference can be taken or drawn against the assessee for making addition and fastening tax liability on the assessee. This conclusion gets strong support from the ratio of the above noted decisions.

36. In view of forgoing discussion we are of the view that in the present case the Assessing Officer proceeded to make addition on the basis of primary and other evidence which was in the form of loose papers found and seized from the premises of Shri Mukesh Sharma and was written by Shri Sharma and there was no evidence or material which could show any direct or indirect nexus with these lose papers with the assessee. The Assessing Officer could not also bring any reliable or substantial evidence against the assessee to established that the persons in whose name land was purchased were benamidars and the assessee was the ultimate beneficiary enjoying the fruits of the purchased lands then the CIT (A) was right in dismissing the action of the Assessing Officer in this regard and we are unable to see

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any valid reason to interfere with the same. We may also point out that the Assessing Officer could not successfully establish that the amount used for making investment by other persons was actually belonging to the assessee and besides the payment shown in the registered purchase deeds there was also un recorded payments which was made by the assessee or on behalf of the assessee therefore no addition could have been made in the hands of assessee on the basis of loose sheets and the CIT(A) was right in allowing relief to the assessee. There is no valid reason before us to interfere with the impugned order on the conclusion drawn by the CIT (A) on the first issue.

6.5 In view of the facts/circumstances as narrated above and also in the light of the aforesaid judicial pronouncements, we are of the view that in the present case, the Assessing Officer proceeded to make addition on the basis of primary and other evidence which was in the form of loose papers found and seized from the premises of Shri Mukesh Sharma and was written by Shri Sharma and there was no evidence or material which could show any direct or indirect nexus with these lose papers with the assessee. It is also clear from the perusal of the seized documents that the “C” alphabet is not there in the seized documents but the Assessing Officer simply presumed that the missing “C” is nothing but its Commissioner, Indore Nagar Nigam (Assessee) and also presumed that the assessee received the money. Therefore, without bringing any corroborative evidence on record, the findings of the Assessing Officer solely based on assumptions and presumptions are not legally admissible

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in law in view of the ratio laid down in the aforesaid judicial pronouncements. The Assessing Officer is bound to prove the allegation with the positive and concrete evidence but in this case, there is no positive and concrete evidence with the Assessing Officer to prove the receipt of money from the said two companies by the assessee. Thus, the ld. CIT(A) was right in dismissing the action of the Assessing Officer in this regard and we do not find any reason to interfere with the same. We confirm the findings recorded by the ld. CIT(A).

7. So far as the grounds raised in the Cross-objection are concerned, we are of the view that as the deletion of addition has been confirmed on merits, we do not find it necessary to adjudicate the same being infructuous and now academic in nature. Thus, the Cross-objection filed by the assessee is also dismissed as infructuous.

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8. In result, appeal filed by Revenue and Cross-objection filed by the assessee are dismissed.

This order has been pronounced as per Rule 34 of ITAT Rules, 1963 on 28.07.2021.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 28th July, 2021
!vyas!

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore