

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

ITA No. 1229/Mum/2013

(A.Y. 2004-05)

Income Tax Officer, 5(2)(2) Room No. 567, Aayakar Bhavan, M.K. Road Mumbai-400 020	Vs.	Kranti Impex Pvt. Ltd. 20, Om Darya Mahal, 80, Nepeansea Road, Mumbai-400 006
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AACCK3044P</b>		

&

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(Arising in ITA No. 1229/Mum/2013 for A.Y. 2004-05)

Kranti Impex Pvt. Ltd. 901/A-B-E, 9 <sup>th</sup> Floor The legend co-op Hsg. Soc. Ltd, Plot No. 220, Walkeshwar Road, Mumbai-400 006	Vs.	Income Tax Officer, 5(2)(2), Room No. 567, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>Appellant</b>	..	<b>Respondent</b>

Revenue by : M.C. Omi Ningshen, DR

Assessee by : Govind Javeri, AR

Date of hearing: 21-02-2018 Date of pronouncement : 28-02-2018

**ORDER**

**PER MAHAVIR SINGH, JM:**

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-9, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-9/ITO-5(2)(2)/231/2010-11 dated 26.12.2012. The Assessment was framed by the Income Tax Officer, Ward- 5(2)(2), Mumbai (in short ITO) for the assessment year 2004-05 order dated 30-12-2010 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



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2. The only issue in this appeal of Revenue is against the order of CIT(A) quashing the assessment completed under section 153C of the Act. For this Revenue has raised the following grounds: -

*"1. Whether, on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in annulling the assessment completed under section 153C of the IT Act, 1961?*

*The prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored. "*

3. Briefly stated facts are that a search action under section 132 of the Act was conducted at the business and residential premises of one Bharat Shah Group of cases on 15-03-2008. During the course of search on Bharat Shah Group of cases certain loose papers marked as annexure A-1 consisting of 9 pages were seized and when confronted to the same to Bharat Shah Group of cases under section 132(4) of the Act on 08-05-2008, he stated that these papers were very old lying since 1985 and it is not known in whose handwriting it is written. These papers contains that the assessee is one of the party who has purchase three flats in the proposed building namely Sea View constructed by Bharat Shah Group of cases i.e. layer export Pvt. Ltd. During the course of assessment proceedings the AO confronted these loose paper No. 11 out of the loose papers folder 1 to 19 marked as annexure A-1 to explain the same. According to AO, there is recording of transactions relating to sale of flat in the legend project promoted by Layer Export Pvt. Ltd. to the assessee on 9<sup>th</sup> floor and 11<sup>th</sup> floor. The AO also noted that according to this paper flat was also allotted to Mangalam Gems Pvt. Ltd. in Necklace view. The AO analyzing note from page No. 11 of Annexure A-1 noted that these transactions were made in FY 2003-04 for an area of 2,550 sq. ft. at the rate of ₹ 15,450/- for 9<sup>th</sup> Floor, and ₹ 15,550/- for 11<sup>th</sup> Floor,



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which clearly establishes that builder has charged ₹ 100 per sq. ft. for higher floor rise and for 5 parking at ₹ 20 lacs. According to AO, the total consideration for both the flats came to ₹ 7.95 crores and after including parking came to ₹ 8,10,50,000/- which is bifurcated in cheque and cash. Cash came to ₹ 3,97,85,898/- at the rate of 1,98,92,949/- for each of the flat. According to AO, the builder has charged total cheque amount of ₹ 3.50 lacs and balance cash payment of ₹ 4,12,64,102/- out of these ₹ 4,12,64,102/- a sum of ₹ 2,06,32,051/- pertains to the assessee and balance 50% pertains to Mangalam Gems Pvt. Ltd. Accordingly, the AO added the cash payment amounting to ₹ 2,06,32,051/- as unexplained investment under section 69 of the Act. Before CIT(A), the assessee challenged the assessment that no satisfaction is recorded prior to the issue of notice under section 153C of the Act. According to assessee, notice under section 153C of the Act was issued on 06-09-2010. Search was conducted on Bharat Shah Group of cases on 15-03-2008. The CIT(A) annulled the assessment by observing in Para 8.2 and 8.3 of the appellate order as under:-

*“8.2. Having carefully and dispassionately considered all the aforesaid facts and circumstances and also the judicial pronouncements and the relevant provisions of sec,153 C of the Act. Earn of the firm view that*

*(i) Satisfaction must be recorded by the Assessing officer of Bharat Shah or Bharat Shah group of cases that money, bullion, jewellery or other valuable article or thing or books of account or documents seized from the premises of Shri Bharat Shah or its group of cases during search operations belonged to the present appellant.*



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(ii) *Such books of accounts or the documents or assets seized and belonging to the present appellant were required to be handed over to the present LAO before issuance of notice u/s.153 C of the Act in the present case.*

8.3 *No material nor any evidences were placed before me, neither by the appellant nor by the LAO, to prove that the aforesaid mandatory conditions were fulfilled in the present case. In view of the above and in the light of previously mentioned judicial decisions and in accordance with the provisions of sec.153 C of the Act the assessment framed u/s 153C of the Act is annulled in this case. Therefore, ground of appeal no. 1 (2) is allowed.”*

Aggrieved, now Revenue is in appeal before Tribunal.

4. On query from the Bench the learned Sr. Departmental Representative only referred to information sent by ACIT central Circle 24 & 26 Mumbai i.e. the AO of the searched person i.e. Bharat Shah Group of cases recording the satisfaction in regard to the assessee vide letter dated 21-12-2009 No. ACIT-24 & 26/information/2009-10, wherein it was stated as under:-

*“Search operation u/s 132 was conducted on the premises of Bharat Shah group, in which loose papers 1 to 19, contained in annexure A – I, were seized from 55, Gamdevi 2nd Floor, Panchshil Plaza, Mumbai on 15.03.2008, copy of which are annexed herewith. These loose papers are systematic records related to actual sales*



*transactions in Legend Project promoted by Layer Exports Pvt. Ltd. Mumbai on 15.3.2008. which are annexed herewith. These loose papers are systematic records related to actual sales transactions in Legend project promoted by Layer exports Pvt. Ltd, situated in walkeshwar, Malabar Hill, Mumbai-400 006. Most of the said papers contains details of flat numbers, flat size (total sold area), rate per sq. ft., total consideration bifurcated in cash and cheques, cash to be paid, cheques to be paid details of renegotiation, details of actual cash payment, details of actual cheques payment etc. In these loose papers sh” represent cash portion i.e. on money or out of books portion and “q” and “chq” represents cheques portion i.e. which is accounted in the books. In this regard, on page No.11, there is recoding of transaction related to sales of flats by layer Exports Pvt. Ltd. to Kranti Impex Pvt. Ltd (PAN AACCK3044P), who is assessed in your charge. As per the said record, your assessee has paid cash money i.e. out of books money of ₹ 2,06,32,051 to my assessee. You are hereby requested to take necessary action in this regard as per provisions of IT act, 1961.”*

5. When the learned Counsel for the assessee was confronted with this, he stated that exactly on identical facts the Tribunal in the case of ITO vs. Mangalam Gems Pvt. Ltd. in ITA No. 1640/M/2013 for AY 2004-05 has confirmed the action of the CIT(A) quashing the assessment by observing as under: -

*“7. We have carefully considered the rival submissions. Factually speaking, it is quite clear that*



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*the present proceedings have been initiated by the Assessing Officer on the strength of section 153C of the Act. It is also clear that the recourse to section 153C of the Act has been taken by the Assessing Officer based on the search action under section 132(1) of the Act, which had taken place in the case of Bharat Shah Group of cases. Before us, the Ld. Departmental Representative has referred to an information dated 21/12/2009 forwarded by the Assessing Officer of Bharat Shah Group of cases, which reads as under:-*

*“Sub:- Information in case of Kranti Impex Pvt.(PAN AACCK 3044P)*

*Search operation under section. 132 was conducted on the premises of Bharat Shah group, in which loose papers 1 to 19, contained in annexure A-1, were seized from 55, Gamdevi 2nd Floor, Panchshil Plaza, Mumbai on 15/03/2008. Copy of which were annexed herewith. These loose papers are systematic records related to actual sales transactions in Legend project promoted by Layer Exports Pvt. Ltd. situated in Walkeshwar, Malabar Hill, Mumbai 400 006. Most of the said papers contains details of flat numbers, flat size(total sold area), rate per sq. ft. Total consideration bifurcated in cash and cheques, cash to be paid cheques to be paid, details of renegotiation, details of actual cash payment, details of actual cheques payment etc. In these loose papers*



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*“sh” represent cash portion i.e. on money or out of books portion and “q” and “chq” represents cheque portion i.w. which is accounted in the books. In this regard, on page no.11, there is recording of transactions related to sales of flats by Layer Exports Pvt. Ltd. to Kranti Impex Pvt. Ltd. (PAN AACCK3044P), who is assessed in your charge. As per the said record, your assessee has paid cash money i.e. out of books money of Rs.2,06,32,051/- to my assessee. You are hereby requested to take necessary action in this regard as per provisions of IT Act, 1961.*

*Ostensibly, such information reflects that certain loose papers were found in the course of search in the premises of Bharat Shah Group, which inter-alia, contain record of sale transactions of M/s. Layer Exports Pvt. Ltd. The aforesaid information further reveals that in the recording of transaction relating to the sale of flats by M/s. Layer Exports Pvt. Ltd. to the assessee company, it showed that assessee had paid money out of books to the extent of Rs.2,06,32,051/-. On a plain reading of section 153C of the Act, as it stood at the relevant point of time, it is evident that the Assessing Officer of the searched person ought to be satisfied that, inter-alia, any money, bullion, jewellery or valuable article or books of account of documents seized or requisitioned belongs to a person other than the searched person. The phraseology of section 153C of the Act further prescribes that only after such*



*satisfaction, the Assessing Officer of the searched person can hand over such documents to the Assessing Officer having jurisdiction of such other person. Furthermore, the Assessing Officer of such other person can issue a notice to that person to assess or reassess his income under section 153C of the Act only after such handing over from the Assessing Officer of the searched person. Be that as it may, coming to the facts of the present case, at the time of hearing the Ld. Departmental Representative also furnished a note dated 06/09/2010 prepared by the Assessing Officer of the instant assessee, which reads as under:-*

*“M/s. Layer Exports Pvt. Ltd. is one of the group companies of Bharat Shah, in whose case Search & Seizure action was conducted on 15.03.2008. Information has been received that M/s. Mangalam Gems Pvt. Ltd. an assessee of this charge, has purchased property from Layer Exports Pvt. Ltd. and the payments towards the said property include cash elements also. In this regard copy of seized loose papers 1 to 19 has been forwarded in Annexure A-1 as evidence by the Asstt. CIT, Central Cir.24 & 26,Mumbai, vide letter No.ACIT-24 & 26/information/200910 dated 21.12.2009. The page No.11 of the seized loose paper specifically shows some figures of the transaction details of the assessee without dates, in coded word wherein “Q” represents cheque and “SF” represents cash. The total*





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*of such cash part as ascertained by the ACIT 24 & 26. Mumbai on the basis of this loose paper comes to Rs.2,06,32,051/-. Therefore, in view of the information available on record, the undersigned is satisfied that the documents seized relates to the assessee and that the purchase consideration of the properties involves cash elements, and that these are out of the books of the assessee and therefore such portion of income is to be brought to tax. Therefore, the undersigned is satisfied that this is a fit case for invoking the provisions of section 153C of the Income-tax Act and accordingly notice is being issued.*

*On the basis of the aforesaid, it is pointed out that the Assessing Officer has recorded the requisite satisfaction contemplated under section 153C of the Act prior to issuance of notice on 09/09/2010.*

*7.1 In this background, the aspect which is required to be examined is as to whether the CIT(A) is correct in holding that the conditions precedent for issuance of notice under section 153C of the Act have not been fulfilled. At the time of hearing, the Ld. Representative for the assessee had relied upon the judgment of the Hon'ble Delhi High Court in the case of CIT v. Pepsico India Holdings (P.) Ltd., 370 ITR 295(Del). In order to appreciate the legal position enunciated by the Hon'ble Delhi High Court in the case of Pepsico India Holdings (P.) Ltd.(supra), a reference be made to the expression "belongs" or "belong to" contained in section 153C*



*of the Act. Notably, in order to cover the assessee under section 153C of the Act, the Assessing Officer of the searched person must be satisfied that the seized material i.e. money, bullion, jewellery, or other valuable article or things or books of account or documents does not belong to the person in respect of whom search was conducted. The Hon'ble Delhi High Court explained that in the context of section 153C of the Act, the expression "belongs to" cannot be equated to "relates to" or "refers to". By pointing out an illustration, the Hon'ble Delhi High Court noted that the registered sale deed belongs to the purchaser of the property although it would relate to or refer to the vender also. According to the Hon'ble Delhi High Court, if purchaser's premises are searched and the registered sale deed is seized, it cannot be said that it "belongs to" the vendor just because his name is mentioned in the document. In the converse, it was noted by the Hon'ble Delhi High Court, that if vendor's premises are searched and copy of the sale deed is seized, it cannot be said that the copy "belongs to" the purchaser just because it refers to him and he holds the original sale deed. In our considered opinion, the aforesaid legal position explained by the Hon'ble Delhi High Court in the context of section 153C of the Act is quite pertinent in the present case also.*

*7.2 In the present case, the information sent by the Assessing Officer of the searched person to the Assessing Officer of the assessee was based on certain notings on a loose paper found in the premises of Bharat Shah Group of cases. Quite*



*clearly, even the Assessing Officer of the searched person, as manifested by the information sent to the instant Assessing Officer, which we have extracted above, does not conclude much less makes a charge that the loose papers “belong to” the assessee. There is no averment that loose papers do not belong to the searched person. In fact, even the satisfaction note canvassed by the Ld. Departmental Representative before us, which has been extracted above, does not say that the loose paper belong to a person other than the searched person. At best, the only charge made out is “ that the documents seized relate to the assessee and that purchase consideration of the properties involve cash element.....” At this stage, it would be pertinent to go back to the legal position explained by the Hon'ble Delhi High Court in the case of Pepsico India Holdings (P.) Ltd (supra), wherein it is held that the expression “relates to” cannot be equated to the expression “belongs to” which finds a mention in section 153C of the Act. Therefore, considering that Revenue has failed to establish that the documents in question do not belong to the searched person, the question of invoking of section 153C of the Act in the hands of the assessee company merely on the strength that the documents being related to it, cannot be justified.*

*7.3 Therefore, in view of the aforesaid discussion, we uphold the ultimate conclusion of the CIT(A) annulling the assessment, albeit on the ground that above discussed ingredients of section 153C of the Act have not been satisfied in this case.*



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*8. Since the action of the CIT(A) in annulling the assessment has been affirmed by us, the Cross Objection of the assessee dealing with merits of the addition become academic and is also liable to be dismissed.”*

6. The learned Counsel for the assessee further stated that the Tribunal in the case of ACIT vs. Layer Exports Pvt. Ltd. clearly held that the documents seized by the department are dumb documents and for this he relies on para 33 to 38, which reads as under: -

*“33. In entirety of the matter, we are of the view that an addition in assessments carried out pursuant to search action u/s 132 of the Act has to be related to cogent and positive materials found during search which prove conclusively that the assessee has either earned an income or made an investment which has not been recorded in his regular books of account or that his case is covered under any of the deeming provisions contained in sections 68, 69, 69A to 69D of the Act. However, additions cannot be sustained merely on the basis of rough noting made on few loose sheets of papers unless the AO brings on record some independent and corroborative materials to prove irrefutably that the said noting reveal either unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. As discussed above, in the instant case, assessments for the impugned years have been completed u/s 153A of the Act which relates to assessment in case of search or requisition. The prerequisite condition for application of Sec. 153A of the Act is a search conducted under section 132 of*



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*the Act or any requisition made under section 132A of the Act to unearth hidden income or property. Thus, the very purpose/ essence of search conducted u/s 132 of the Act is to unearth hidden income or property or get hold of books of account or documents which has not been or will not be otherwise produced by the assessee in regular course on issue of summons or notice. In the assessee's case, as stated above, the purported search action did not lead to discovery of any unaccounted money, bullion, jewellery or other valuable article or thing. Further, no books of account revealing any undisclosed transactions of the assessee were found during the course of search. The entire assessment order revolves around scribbling in loose sheets of papers seized from premises of another person in course of search action on such other person. It is a fact that the said rough loose sheets of papers scribbled by some anonymous person and seized in course of search of another person cannot be termed as 'documents' having any evidentiary value within the meaning of section 132 or section 132A of the Act. Thus, the entire assessment u/s 153A of the Act in case of the assessee rests on shaky and incorrect foundation and thus deserves to be quashed. Copies of the 19 loose sheets of papers marked as Annexure A-1 seized from the premises of PDTEPL are enclosed at pages 94-112 of the assessee's Paper Book-I.*

*34. The case law relied on by assessee of co-ordinate bench of Delhi Tribunal in the case of Atul Kumar Jain Vs. DCIT reported in (1999) 64 TTJ*



*(Del) 786 (Copy enclosed at pages 334-357 of assessee's Paper Book) had an occasion to examine the meaning word "document" and its evidentiary value for the purposes of sections 132, 132A and 132(4A) of the Act. At Para 6.4 to 6.6 of the order, the Delhi Tribunal observed as under:-*

*"6.4 We find that the AO 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 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 ..... According to the Hon'ble Supreme Court in the case of Ramji Dayawala & 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 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 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.*

*6.5 Further, the Hon'ble Supreme Court in the case of Mohd. Yusuf & Anr. Vs. D. & Anr. AIR 1968 Bom. 112 has observed that the evidence of the contents contained in document is hearsay evidence unless the writer thereof is examined before the Court. The Hon'ble Court, therefore, held that the attempt to prove the contents of the document by proving the signatures of the handwriting of the author thereof is set at naught, the well-recognised rule that hearsay evidence cannot be admitted.*

*6.6 If we consider the said piece of paper seized during search in light of the definition of the word "document" as given in the Indian Evidence Act and General Clauses Act and the truthfulness of the contents thereof in light of the aforesaid decisions of the Hon'ble Supreme Court we find that the said paper contains jottings of certain figures but the same does not describe or express the substance of any transaction and even if the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the*



*transactions the way the AO has deciphered them without support of corroborative evidence of the parties attributed to the alleged transaction. The said paper, therefore, does not come within the compass of the definition of the word "document" to be used as any evidence. The paper seized, therefore, has no evidentiary value and accordingly the same cannot form the basis for assessing the undisclosed Income.*

*In light of the aforesaid judgment, we are of the view that the impugned loose sheets of papers cannot come within the ambit of definition of the word "document" to be used as evidence and the same cannot form the basis for assessing the undisclosed income of the assessee. Admittedly, the said loose papers are not in the form of pronotes or duly executed documents or books of account or certificates or money receipts which can prove conclusively the factum of any undisclosed income earned by the assessee or any unaccounted investments or expenditure made by him. Additions cannot be made simply on the basis of rough scribbling made by some unidentified person on few loose sheets of papers.*

*35. Our attention was further drawn to the decision of the Kolkata Tribunal in the case of ACIT Vs. Sri Radheshyam Poddar reported in (1992) 41 ITD (Cal) 449 (Copy enclosed at pages 368-372 of assessee's Paper Book) wherein it was held that no addition can be made simply on the basis of an*





*unsigned piece of paper. Held as under (at para 5 of the order):-*

*"After hearing the rival submissions we are of the opinion that the assessee should succeed in this regard. It is no doubt true that as per the provisions of section 132 (4A)(ii), when any document is seized pursuant to search it may be presumed that the contents of such documents are true. We have examined a copy of MOU filed before us in this appeal and we find that the same, is not signed either by the assessee or by any person for and on behalf of Naihati Jute Mills. No names whatsoever are also mentioned in the said MOU on the basis of which the Assessing Officer has made the addition of Rs. 4,93,900. We entirely agree with the assessee's counsel that under section 132(4A) there is no presumption that if an unsigned paper or document is found during the course of search it has to be presumed that it is signed. We find in section 132(4A)(ii) that if there is signature on any document or account books recovered during the course of search then it has to be presumed that the signature and every other part of such account books and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by or to be in the handwriting of any particular person are in that person's handwriting. Needless to say that in law no*



*document or paper can have any validity or enforceability until the same bears signature of concerned parties. Signature is the soul and any paper, notice or document is a body. Body without a soul is of no use, value or consequence. What is the significance and importance of a signature on any document can be found in the judgment of Hon'ble Calcutta High Court in the case of B.K Gooyee v. CIT [1966] 62 ITR 109. In that case the Assessing Officer issued a notice under section 34 of the Income-tax Act, 1922 but did not sign it. When the matter came up before the Hon'ble High Court at Calcutta it was held by their Lordships that the unsigned notice issued by the ITO was invalid and consequently equal to no notice. If we are to agree with the contention of the revenue that though the MOU is unsigned the same should form the basis for making additions as per the presumptive provision contained in section 132(4A)(ii) of the Income-tax Act, 1961 then there will be harsh, highpitched and unreasonable assessments leading to absurd results and miserable consequences on the taxpayers. The provisions of section 132(4A) will become oppressive if applied in this manner and surely this is not the purpose or intention of the Legislature in enacting section 132(4A) in Income-tax Act. Like any other provision of a statute the provisions of section 132(4A) also have to be applied and*



*interpreted in very reasonable manner and in consonance with justice. We say so on the basis of judgment of Hon'ble Supreme Court in the case of R.B. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 at p. 575.*

36. Further in the case of Pioneer Publicity Corporation & Others Vs. DCIT reported in 67 TTJ 471, (Copy enclosed at pages 373-437 of Paper Book) the Delhi Tribunal held that "no addition could be made simply on the basis of a noting on a visiting card found during search directing certain payment to bearer of card when there was nothing to establish that the assessee paid the amount to the said person. The Department had not made any enquiry from the person named. In the card about the amount given and as such, no addition could be made in the hands of the assessee.

37. Again in the case of Ashwani Kumar Vs. ITO (1992) 42 TTJ (Del) 644, the Delhi Tribunal observed as under (Copy enclosed at pages 303-315 of assessee"s Paper Book):-

*"Then for presuming that the contents of the books of account or document are true the document must be a speaking one. In this case the slip, said to have been recovered by the revenue, does not contain any narration in respect of the various figures noted therein. The slip does not indicate whether the figures referred to quantities of money or to quantities of goods and whether one side, and if so, which side represents receipts and*



*which side represents outgoings. This is, thus a dumb document and as the orders of the authorities below would show they have merely added the total of the right side of the slip without supplying the figures any language to indicate their meaning. In the case of such a dumb document, the provisions of Section 132(4A) do not permit any one to presume that the total of the figures of right side of the slip represents the assessee's income. The presumption at the most is attracted to the figures and a further presumption that they represent the income of the assessee is not permissible under Section 132(4A). 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 evidence which may provide an acceptable narration to the various entries. The evidence collected should be such that any reasonable man would accept, the hypothesis advanced by the revenue that the figures written on the right side of the slip represent incomes earned by the assessee. It was conceded by the learned Departmental Representative that no such evidence has been brought on record.....Therefore the additions cannot be sustained and they are hereby deleted." (Emphasis supplied).*

38. *In view of the aforesaid judgments, it is submitted that since the impugned seized papers*



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*are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted. Hence, we are of the view that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law. As such, the same is deleted. This issue of the assessee's appeal is allowed and that of the Revenue is dismissed."*



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7. In view of the above facts and circumstances, which are exactly identical to the facts in the case of Layer Exports Pvt. Ltd. (supra) and Mangalam Gems Pvt. Ltd (supra), wherein Tribunal has taken exactly identical view confirming quashing of the assessment. Respectfully following the Tribunal order, we confirm the order of CIT(A) quashing the proceedings under section 153C of the Act. The appeal of Revenue is dismissed. Consequently, CO of the assessee which has raised the issue on merits need not to be adjudicated because it has become academic, accordingly dismissed. The appeals of Revenue and CO of the assessee, both are dismissed.

**8. In the Result, both, the appeals of Revenue as well as CO of assessee are dismissed.**

Order pronounced in the open court on 28-02-2018.

Sd/-

(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 28-02-2018

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**