

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

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.379/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2015-16)

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आयकर अपील सं./ ITA No.381/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

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आयकर अपील सं./ ITA No.380/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Array Land Developers Pvt. Ltd. Old No.19 & 20, New No.38/12, Venkatarman Street, T.Nagar Chennai-600 017.	बनाम / Vs.	DCIT Central Circle-2(2) Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAHCA-0525-C		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri R. Venkata Raman (C.A)- Ld.AR
प्रत्यर्थी की ओरसे/Respondent by	:	Shri M.Rajan (CIT) – Ld. DR
सुनवाई की तारीख/Date of Hearing	:	02-05-2023
घोषणा की तारीख /Date of Pronouncement	:	09-06-2023

आदेश / ORDER

Per Bench:

1. Aforesaid appeals by assessee for Assessment Years (AY) 2015-16, 2016-17 & 2017-18 arises out of common order passed by Ld. Commissioner of Income-Tax (Appeals)-19, Chennai on 21-03-2022 in

the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.143 r.w.s. 153A of the Act on 25-12-2019. The facts as well as issues are stated to be common in all the appeals. For the purpose of adjudication, facts from AY 2015-16 have been culled out by us in this order. The grounds of appeal taken by the assessee read as under: -

Ground No.1:

The High-Pitched Order was passed without application of mind, ignoring the principles of natural justice and not following the basic procedure:

The learned Commissioner of Income Tax (Appeals) has simply ignored the following objection raised by the Appellant objecting to the High-Pitched Order passed by the learned Assessing Officer was without application of mind, ignoring the principles of natural justice and not following the basic procedure:

On the facts and circumstances of the case, the learned Assessing Officer has erred in hurriedly passing the high pitched assessment order, making a huge addition of unjustifiable and unimaginable sum as "Unexplained Money", without possessing any concrete material seized from the Appellant Company during search, in a highly arbitrary manner, without giving basic opportunity to the Appellant to defend itself, violating all norms of the law, without following the rules of natural justice, totally based on presumption and assumptions and based only on some excel sheets and alleged unsigned receipts not relating to the Appellant Company, not relevant for the above assessment year.

The learned Assessing officer before coming to the conclusion, has not observed the principles of natural justice, not applied his mind appropriately and acted in a gross negligence manner which had resulted in the addition made in the assessment order which are not backed by any sound reason or logic.

The learned assessing officer has misinterpreted the provisions of law and further the well-established facts on records in favour of the appellant have out rightly been ignored. Hence, it is proved that it is a prima-facie case of high-pitched assessment order.

Further, the very fact that the stand taken by the Ld. Assessing Officer with regards to the proposed addition has been varying between the first notice (issued u/s.142(1) dated 23.10.2019), wherein the proposed addition was Rs.34,04,25,860/- and subsequent notices (issued u/s.142(1) dated 14.12.2019 and 21.12.2019), wherein the proposed addition was Rs.50,95,00, 000/- and not having provided any reasons for the enhancement of Rs. 16,90,74,140/- based on the same materials, is by itself a proof that the aforesaid Assessment was completed without proper application of mind and without appreciating the facts on records.

Though the Appellant Company had repeatedly denied any connection with the aforesaid excel sheets and alleged unsigned receipts, the Ld. Assessing Officer was not justified in relying on the same without recording any statements from the parties mentioned in the said excel sheets and alleged receipts in order to establish any connection between the Appellant Company and the alleged

transactions with the parties mentioned in the aforesaid excel sheets and alleged unsigned receipts.

The Ld. Assessing Officer has suppressed the fact that statements were recorded from Mr. V.S Sivakumar, the authorized representative and director of the Appellant Company and that he had made subsequent retractions on 03.01.2018 and 11.01.2018 while making the aforesaid Assessment.

On the facts and circumstances of the case, the High-Pitched Arbitrary Assessment Order passed without application of mind, ignoring the principles of natural justice and not following the basic procedure, is illegal, bad in law and liable to be quashed.

Ground No.2:

The order making additions u/s.69A of the Act, is illegal and not maintainable; On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the arbitrary assessment order, making a huge addition of unjustifiable and unimaginable sum as Income U/S.69A of the Act, under "Unexplained Money", without possessing any concrete material seized from the Appellant Company during the search.

In the Search and Seizure operation conducted U/S.132 on 09.11.2017 in the case of the Appellant Company, the Appellant Company was not found to be the owner of any money, bullion, jewellery or other valuable article and hence the provisions of Sec.69A has no operation in the Appellant Company's case.

On the above facts and circumstances of the case, the order making additions u/s.69A of the Income Tax Act, is illegal, bad in law and liable to be quashed.

Ground No.3:

Addition made u/s.69A towards Purchase of Windmill - Rs.50.95 Crores:

On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) has erred in confirming the assessment order, making an arbitrary addition of Rs.50,95,00,000/- on the basis of assumptions and placing reliance on some excel sheets and alleged unsigned receipts not belonging to the Appellant Company and figures reflecting in an excel file not connected to the Appellant's business, without any concrete material on hand to prove that the Appellant company had made cash payments for purchase of windmills and without considering the objection raised by the Appellant Company during the course of assessment proceedings.

The learned Commissioner of Income Tax (Appeals) failed to consider the fact that while making the aforesaid additions, the learned Assessing Officer has also included the amounts that has already been admitted in the Income Tax returns of the Appellant Company for the Asst. year: 2015-16 to the tune of Rs.16,90,74,140/- for purchase of windmills during the year without providing any reason for taking the stand in spite of specific requests of the Appellant Company.

On the above facts and circumstances of the case, the order making arbitrary additions u/s.69A of the Income Tax Act, without any materials on hand and without any basis is liable to be quashed.

The Appellant Company may kindly be permitted to adduce any other relevant ground at the time of hearing of this appeal.

The Hon'ble Members of the Tribunal may kindly consider the above facts and circumstances and be kind enough to quash the arbitrary and illegal order making a huge addition of Rs.50,95,00,000/- as unexplained money u/s. 69A of the

Income Tax Act, in the hands of the Appellant company without any concrete materials seized during the search and without giving opportunity to the Appellant company to defend itself in lines with the rules of natural justice.”

As is evident, the assessee is aggrieved by confirmation of certain additions in the impugned order as made by Ld. AO in the assessment order.

2. The Ld. AR, drawing attention to the factual matrix of the case, advanced arguments and submitted that the impugned addition has been made merely on the basis of loose sheet and unsigned agreements & receipts which do not carry any evidentiary value. These documents, as per the submissions of Ld. AR, are dumb documents which could not form basis of making impugned addition. It has further been averred that Ld. AO did not carry out any independent investigations to corroborate any of such documents and therefore, the impugned additions are not sustainable in the eyes of law. The Ld. CIT-DR, on the other hand, submitted that entries in the excel sheet found from the laptop tallied with the books of accounts of the assessee. The surrounding circumstances would justify impugned additions. Having heard rival submissions and after perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in the business of agriculture and allied activities.

Assessment Proceedings

3.1 Pursuant to search operations in the case of Smt. V.K. Sasikala and the assessee entity on 09.11.2017, certain alleged incriminating material was found which form the very basis of impugned additions.

During the course of assessment proceedings, notice u/s 153A was issued in due course of time which was followed by statutory notices u/s 142(1) calling for requisite details from the assessee. The search was also carried out in the residential premises of one D. Shakila w/o Rajarajan (a close relative of Smt. V.K. Sasikala) at Door No.17/21, Padmanabhan Street, North Usman Road, T. Nagar, Chennai and a laptop (Asus Zen Book 02305 S.No./R41009504) used by Smt. V.K. Sasikala was seized. Smt. V.K. Sasikala confirmed that the laptop belonged to her and it was used by her.

3.2 On examination and analysis of the laptop, an excel file titled "WIND MILL RATE" was found in a folder titled "ARRAY WIND MILL". This excel file contained an excel sheet by the name WIND MILL and the contents of the same has been extracted in para 4.3 of the assessment order. This sheet contained the details of parties from whom windmill was purchased, HTSC No., KW details of wind mill, date of purchase, Land cost as per Sale Deed, Machinery Cost including VAT and Total cost which was summation of machinery cost and land cost. The total cost tallied with the total purchase value of the windmills along with the land as per the books of accounts of the assessee. The last column had no title but it mentioned certain acronyms like "7C95L" etc. Based on certain loose sheets, the term "C" was decoded as 'Crores' whereas the term "L" was decoded as 'Lacs'. The loose sheets were numbered as page numbers 252 to 258 and seized vide ANN/SP/VKS/Office/LS/S-Volume 2. These sheets were found at office block of 'Veda Nilayam', Old No.36, New No.81, Poes Garden, Chennai. The same was in the shape of receipt and the

contents of the same have been extracted on page nos. 7 to 13 of the assessment order. It could be seen that the receipt does not bear signature of any of the parties and the same are in the shape of unsigned documents. The excel sheets coupled with these unsigned receipts led Ld. AO to believe that the assessee entity paid unaccounted cash towards purchase of windmills.

3.3 The conclusions drawn by Ld. AO on the basis of these documents were as follows: -

4.4 In page numbers 255 to 258 of the loose sheets seized vide ANN/SP/VKS/Office/LS/S - volume 2, it is seen that 'Surana group' comprising of 'Surana Corporation limited', 'Surana Wind Energy Private Limited' and 'Gurudev Wind Energy Private Limited' had issued a cash receipt confirmation of Rs.8,75,00,000/- (Rupees Eight Crores and Seventy Five Lakhs only) in favour of M/s. Array Land Developers Private Limited on 22nd day of June 2014 (22/6/2014) in lieu of sale of 5 wind mills (3 wind mills with HTSC no:2217,2218, 2219 of M/s. Surana Wind Energy Private Limited and 2 wind mills with HTSC no:2259 & 2293 of M/s. Gurudev Wind Energy Private Limited) along with lands (in the name of M/s. Surana Corporation limited) in which the windmills are situated. The said receipt of cash of Rs.8,75,00,000/- from M/s Array Land Developers is out of the total cash consideration of Rs.17,50,00,000/- (Rupees Seventeen Crores Fifty Lakhs only) to be paid to M/s Surana group. The facts established from the above mentioned loose sheets is in conformity with the notings made in the excel sheet titled "ARRAY LAND DEVELOPERS PVT LTD. PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON" wherein it is mentioned that M/s. Array Land Developers had purchased Five windmills with the same HTSC No as mentioned in the loose sheet from Surana Corporation. But the consideration paid for the purchase of windmills from Surana group as per books of accounts of M/s. Array Land Developers is around Rs.5,00,00,000/- which is less than the total cash consideration to be paid as per the loose sheet which is Rs.17,50,00,000/-, which confirms the fact that M/s. Array Land developers had paid unaccounted cash towards the purchase of windmills. Further M/s. Array Land Developers Pvt Ltd had paid Rs.5,00,00,000/- to M/s. Surana group through banking channels whereas the total consideration to be paid by M/s. Array Land 'Developers Pvt to M/s. Surana group as per the loose sheet is Rs.17,50,00,000/-.

Moreover, the cash consideration to be paid by M/s. Array Land Developers Pvt to M/s. Surana Group of Rs.17,50,00,000/- more or less matches with abbreviated value of "18C50L" which is Rs.18,50,00,000/- i.e., the total consideration as per the last column of the Excel sheet titled "ARRAY LAND DEVELOPERS PVT LTD. PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON" .

4.5 Similarly Pg.no.253 and 254 of the loose sheets seized vide ANN/SP/VKS/Office/LS/S - volume 2, contains details of cash receipt of Rs.3,75,00,000/- (Rupees Three Crore Seventy Five Lakh only) by M/s.Saravana Insulators Limited from M/s.Array Land Developers Private Limited in lieu of sale of NIG Micon make 1650 KW windmill with HTSC no.2303,out of the total cash consideration of Rs.7,50,00,000/- (Rupees Seven Crore Fifty Lakh only). The above details inferred from the loose sheets matches the row with serial no.18 of the excel sheet titled " ARRAY LAND DEVELOPERS PVT LTD. PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON", wherein it is seen that M/s.Array Land Developers Private Limited has purchased windmill with HTSC no: 2303 and 1650 KW from M/s. Saravana Global energy Limited. But the total consideration as per books of accounts of M/s. Array Land Developers Private Limited is Rs.3,50,00,000/- (Rupees Three Crore Fifty Lakhs only), whereas the last column in the said row with the notings "7C50L" can be inferred as Rs.7,50,00,000/- matches with the Total consideration as per the loose sheets elaborated above, which again proves the fact that M/s. Array Land developers had paid unaccounted cash towards the purchase of windmills, as seen by the difference between the total consideration as per the last column of the Excel sheet titled "ARRAY LAND DEVELOPERS PVT LTD.PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON" and the accounted purchase value of the windmills purchased from Saravana group with same HTSC no. as per the books of accounts of M/s. Array Land developers pvt ltd.

4.6 Hence, based on the points as elaborated in above para 4.3 to 4.5, it is inferred that the notings made in the last column of the excel sheets in abbreviated forms shall be construed as total Consideration paid in cash by M/s. Array Land Developers towards the purchase of wind mills in various financial years with "C" denoting Crores and "L" denoting Lakhs.

Hence Tabulation is made as follows to demarcate the unaccounted payments made in cash by M/s. Array Land Developers Pvt. Ltd to various vendors for purchase of windmills In various financial years by comparing the Total consideration paid for purchase of wind mill as per the notings in the last column of the excel sheet titled "ARRAY LAND DEVELOPERS PVT LTD.PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON" and the Purchase value of the windmills as per the books of accounts of M/s. Array Land Developers.

No.	Wind mill purchased from	PAN & Address	KW	Purchase Cost as per books	Notification as per excel sheet	in Rs.	FY/AY
1.	Om Containers P. Ltd	AAACO8336L 409, GIDC Estate, Aanjusar Savli Vadodara-391775	2100	2.95cr	7C95L	7,95,00,000	2014-15 / 2015-16
2	Thirupur Surya Textiles P Ltd	5, MP Nagar Extn, Pillayar Koil Thottam Tirupur, Coimbatore- 641 604.	1250	1.05 Cr	4C10L	4,10,00,000	2014-15 / 2015-16
3	Arun Excello Group 1.Arun Excello Urban Infrastructure Pvt Ltd 2.Arun Excello Wind Energy 3.Arun Fabricators	AAGCA2312Q 18, Bhatiad Towers West Cott Road Royapettah Chennai-14.	600	4.40Cr	12C90L	12,90,00,000	2014-15 / 2015-16

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4.	Surana Corporation Ltd	AAACS3122L 29, Whites Road, Royapettah Chennai-14	850	5Cr	18C50L	18,50,00,000	2014-15 / 2015-16
5	Saravana Global Energy Ltd	AAHCS3240C 15, New Giri Road T.Nagar, Chennai-17	1650	3.50Cr	7C50L	7,50,00,000	2014-15 / 2015-16
6	Pallipalayam Spinners Pvt.Ltd	AABCP2474R 14A, Sankari Bye Pass Road, Pallipalayam, Erode- 638006	750	48,13,500	4C15L	4,15,00,000	2015-16/ 2016-17
7	Sengunthar Mills Pvt Ltd	AACCS9446B 194/1, Pallipalayam Road Varappalayam, Thiruchengode Tk Namakkal-637209		72,00,000	1C32L	1,32,00,000	2015-16/ 2016-17
8	Guhan Textiles Mills P.Ltd	AAACG8021E 201, Dharapuram Road, Tirupur 641604.	1250	3,55,86,600	7C	7,00,00,000	2016-17/ 2017-18
9	Ramprasad Tubs & Bars P.Ltd.	AAACR9900P 289, Sathy Road, Kunnathur,Pudur Coimbatore-641 107.		33,37,500	1C82L	1,82,00,000	2015-16/ 2016-17
10	Sakthi Finance Ltd	AADCS0656G 62,Dr.Nanjappa Road, Gandhi Pura Coimbatore-641 018	600	1,62,00,000	5C40L	5,40,00,000	2015-16/ 2016-17
11	Nagarjuna Fertilizers & Chemicals Ltd.	AADCK1533E 8-2-248, Punjagutta, Nagarjuna Mills Hyderabad-500082	2100	51,08,94,00 0	62C	62,00,00,000	2015-16/ 2016-17

3.4 The Ld. AO thus observed that Surana group comprising of 3 entities had issued a cash receipt confirmation of Rs.875 Lacs in favor of the assessee on 22.06.2014 against sale of windmills and land on which windmills were situated. The said receipt was out of total agreed consideration of Rs.1750 Lacs. The said amount, in the excel sheet was reflected as Rs.1850 Lacs and therefore, the entries made in the loose sheet was, more or less, in conformity with the noting made in the excel sheet. However, as per books of account, the consideration paid for purchase of machinery was only Rs.500 Lacs and accordingly, it was to be held that the assessee paid unaccounted cash towards purchase of windmills.

Similar observation was made with respect to entry found against M/s Saravana Insulators Ltd. The amount mentioned in the loose sheet was Rs.375 Lacs out of total sale consideration of Rs.750 Lacs. The amount reflected in the books of accounts was Rs.350 Lacs only.

It was thus inferred that the notings made in the last column of the excel sheets in abbreviated forms was to be construed as total consideration paid in cash by the assessee towards purchase of wind mills in various financial years with "C" denoting Crores and "L" denoting Lakhs.

In the light of all these facts, Ld. AO tabulated the unaccounted payments allegedly made in cash by the assessee to various vendors for purchase of windmills in various financial years by comparing the total consideration paid for purchase of wind mill as per the notings in the last column of the excel sheet vis-à-vis purchase value reflected by the assessee in its books of accounts. Finally, Ld. AO proceeded to add the differential amount allegedly paid in cash for acquisition of windmill from these parties as unexplained money u/s 69A for different assessment years and put the assessee to show-cause notice dated 21.12.2019.

3.5 The assessee strongly objected to the conclusions drawn by Ld. AO on the ground that the editable excel sheet and the loose sheets found by the search team was without any signature and these sheets do not provide a concrete proof for the proposed additions. It was further stated that the assessee had duly declared the correct value of the purchase of windmills in the Income Tax Returns. Neither the assessee nor its directors / shareholders were involved in any such

cash transaction other than as declared in the Income Tax Returns. The assessee also submitted that the excel sheet was neither created by the employees of the assessee nor by any of its directors / shareholders. The data in the excel file was provided by the mediators of the prospective sellers of windmills at the proposal stage which includes the indicative purchase price of new windmills of the corresponding capacity. Further, the alleged receipt as contained in pages 252 to 258, were actually sample drafts brought to the office of the assessee company by the mediators of the prospective sellers of windmill at the time of negotiations. The said drafts were neither created by the employees of the assessee company nor by any of its directors / shareholders. The aforesaid drafts were not executed as the transaction as mentioned therein did not materialized at that time. The cash portion as referred to in the above-mentioned receipt was never paid as the said receipts were merely in a draft stage.

The assessee also requested that if any statements was recorded in connection with the aforesaid excel sheet and loose sheets such as relevant extracts of the statements recorded from Mr. V.S. Sivakumar (Director of the assessee company) and that of Mr. Poongunran (in-charge of the office block at "Veda Nilayam") from which the aforesaid loose sheets had been seized, the same may also be furnished so as to enable the assessee company to provide a suitable explanation in this regard. It was further submitted in the reply that there was no corroborative evidences from the other parties connected to the aforesaid transactions to prove the alleged cash payments. The assessee demanded copies of statements or evidences so procured by

the department from all these parties and suppliers. The assessee also sought opportunity of cross-examination of these vendors / parties. It was finally submitted that the proposed additions were based only on assumptions and not based on any concrete material which would corroborate such cash payments and therefore, the proposed additions could not be made. The reply of the assessee has been extracted by Ld. AO in the assessment order.

3.6 However, Ld. AO continued to maintain that there was huge variation between the actual purchase price as per books of accounts and the indicative purchase prices as allegedly provided by the mediators and the explanation of the assessee was to be rejected. The loose sheets as contained in page nos. 252 to 258 were prepared in a detailed manner mentioning the parties who had received the cash from the assessee. The same was further evidenced by the fact that as per receipts, 50% of cash portion was to be paid in two weeks time after which the vendors of windmill agreed to execute the sale deed and deliver possession of land and the windmill. The balance cash portion was received by the vendors on 22.06.2014 and the sale deed for the purchase of windmills from Surana Group (M/s. Surana Corporation Limited, M/s. Surana Wind Energy Private Limited, M/s Gurudev Wind Energy Private Limited) was executed on 27.02.2015 and the sale deed for the purchase of windmills from M/s. Saravana Insulators Limited was executed on 10.03.2015. Hence the assessee company's claim that the draft receipts were not executed as the transactions referred therein did not materialize at that time, would not hold ground as the transactions referred in the cash receipts were in

the form of advances. Therefore, the assessee's explanation was not to be accepted.

3.7 The Ld. AO further held that the excel file found during search was taken from the laptop of Smt. V.K. Sasikala (shareholder of the assessee company) and loose sheets in page numbers 252 to 258 were seized from 'Veda Nilayam' where she was residing. Smt. V.K. Sasikala was a major decision maker with respect to business affairs of the assessee company which could be observed from the depositions of Shri V.S. Sivakumar, another director of the assessee company. In sworn statement dated 03.01.2018, it was stated by him that he was not involved in any management activity of the assessee company and was not aware of investments in land. However, he was aware of impugned transactions of purchase of windmill from various parties as listed above. As per his statement, Smt. V.K. Sasikala would be the one who had decided the prices of windmills and the original land documents of the aforesaid purchases would be in her custody. The relevant extract from recorded statements has been extracted in the assessment order. Finally, it was held that the impugned additions were not based on mere assumptions but were based on material evidences in the form of excel sheet found from the laptop of Smt. V.K. Sasikala and loose sheet page numbers 252 to 258 as seized by the department. Finally, the differential amount as tabulated above was added to the income of the assessee as unexplained money u/s 69A of the act. Similar additions were made for subsequent two years also.

Appellate proceedings

4.1 The impugned order is common order for all the three years. During appellate proceedings, the assessee raised legal objections and submitted that the laptop was not sealed at the time of seizure and print out was not taken in the presence of an authorized person. Therefore, the veracity of the excel sheet being relied upon by Ld. AO was in serious doubt. Further, the excel sheet was an editable excel sheet and therefore, it could not be relied upon. The laptop was personal laptop of Smt. V.K. Sasikala which could not be taken as evidence as per Evidence Act. The excel sheet was a dumb document which do not convey any meaning and the same could not lead to any assumptions as made by Ld. AO.

4.2 The assessee submitted that Ld. AO erred in making addition on the basis of assumptions and placing reliance on excel sheet and alleged unsigned receipts not belonging to the assessee. There was no concrete material to prove that the assessee made cash payment to purchase the windmills. Regarding loose sheets, it was submitted that the sheets were printed unsigned receipt. There was no evidence as to who delivered the sheets there and for what purpose. It was certain that the same was not created by the assessee and it could be presumed that it was delivered by the persons who had proposed the transactions or his intermediaries. Till the papers are signed, they do not convey anything unless the person who created speaks for it. The same were merely dumb documents which could not be relied upon as held by Hon'ble Supreme Court in the case of **Common Cause v. UOI, [2017] 77 taxmann.com 245** wherein it was held that independent

evidence is necessary as to trustworthiness of the entries. Further, the entries in the loose sheet would not have any evidentiary value and they could not fasten any liability on the assessee. The assessee further averred that no enquiry was made by Ld. AO as to who was the author of the sheets and no enquiry whatsoever was conducted by Ld. AO, in this regard. The assessee categorically denied having made such payment and submitted that the conclusions drawn by Ld. AO was only based on conjectures or surmises without any evidences for the figure shown in the dumb excel sheet. The loose sheets did not have any legal sanctity and could, at best, be described as an offer from prospective sellers and not confirmation of any payment. Reliance was also placed on the decision of Hon'ble Supreme Court in the case of **Lalchand Bhagat Ambika vs. CIT (37 ITR 288)** wherein it was held that no assessment could be made on suspicion. In the absence of any evidences, no addition could be made on assumptions. Another fact brought to the notice was that there was no place for signature of the assessee in any of the loose sheets. Without any registration, the documents would not have any legal sanctity under Registration Act. At best, the loose sheets could be an offer from a prospective seller conveying the terms of his offer and could never be considered as confirmation of any payment. None of parties admitted any extra payment. The Ld. AO failed to examine the sellers for receipts of any extra consideration. There was no evidence at all with respect to alleged extra payment.

4.3 The assessee also assailed the application of Sec.69A since the assessee was not found to be owner of any money, bullion, jewellery

or other valuable article which are not recorded in the books of account. In search operations, no such material was found and therefore, the impugned additions could not be sustained in law.

4.4 The assessee's submissions were subjected to remand proceedings wherein Ld. AO supported the impugned additions. It was stated that the assessment was completed based on the contents of the seized excel sheet. Regarding the difference of Rs.100 Lacs between entry made in the excel sheet vis-à-vis receipt found with respect to Surana Group, Ld. AO stated that the same stood explained by the fact that assessee would have bargained for the final price. The laptop could be used for personal as well as for business purposes. The Ld. AO also stated that due to paucity of time, information was passed on the jurisdictional AOs of other persons to carry out further enquiries.

4.5 The assessee controverted the remand report and brought attention to the fact that no purchases were, in fact, made from M/s Surana Wind Energy Private Ltd., M/s Gurudev Wind Energy Private Limited as well as from M/s Saravana insulators Limited. When no purchases were made, there would be no occasion for cash payment as alleged by Ld. AO. In fact, M/s Saravana Insulators Private Ltd. ceased to exist since 2007. The assessee also filed confirmation from two sellers to substantiate the submissions. It was reiterated that the time gap between date of search and framing of assessment was approx. 24 months which was ample time to make enquiries with the sellers but no enquiry was done by Ld. AO from the sellers. The

assessee also controverted the other observations made by Ld. AO in the remand report.

4.6 The Ld. CIT(A), considering relevant material in record including assessee's submissions and remand report, confirmed the additions with following observations: -

5.1 I have pursued the assessment order, grounds of appeal, written submissions, remand report of the AO and objections raised by the appellant upon the remand report. The AO has made the addition based upon the information found and subsequently the same was taken a print out and seized at the residential premises of Smt. D. Shakila, w/o. Rajarajan, (a close relative of Smt. V.K.Sasikala) at Door No.17/21, Padmanabhan Street, North Usman Road, T.Nagar, Chennai-17. Smt. V.K.Sasikala in her statement recorded u/s 131 of the I.T.Act has admitted that the laptop seized as per Annexure in ANN/SS/DG/ED/S-1,2,3 belongs to her only. By way of this admission, the laptop seized belongs to Smt.V.K.Sasikala only. There can be no second opinion upon this."

5.2 The AR, during the course of appellate proceedings, has disputed the excel sheet extracted from the electronic device and pleaded that the extraction was made without following the standard operating procedure with the required certificate as per the Supreme Court. In this regard, reliance was placed on the decision of the Supreme Court in the case of Anvar P.V. vs P.K. Basheer & Ors on 18 September, 2014 (Civil Appeal No.4226 of 2012). In his case, it has been held that a certificate is a must along with the electronic evidence through which the person has to clearly mention that the electronic record that is presented is to the best of his knowledge and belief.

5.3 The contention and the decision relied upon by the appellant have been examined along with the remand report submitted by the AO upon this issue. The decision relied upon by the appellant is based upon the decision made by the Apex Court in a Civil case. Here, the issue is entirely different. The electronic device was seized during the course of the search. While seizing the electronic device all the procedures prescribed under the Act have been meticulously followed i.e., sealing the electronic device and obtaining signature of the persons searched, signature of independent witnesses and the signature of the authorised officer have been placed. The appellant has not disputed the procedure adopted.

5.4 The information contained in the laptop (Asus Zenbook 02305, S.No./R41009504) sized vide Annexure No.ANN/SS/DG/ED/S-2 from the residential premises of D.Shakila (a close relative of V.K.Sasikala) was extracted in the form of excel sheet. The Asst. Director of Income tax (inv.) Unit 4(3) vide his order dated 27.12.2017 has made a proceeding in respect of opening and closing of the above electronic device. The proceeding was made as per the order under Rule 112(6) of Income tax Rules. This proceeding is self-explanatory how the electronic device was opened and extracts were taken in the presence of Shri Rajarajan, husband of Smt. D. Shakila and two independent witnesses, after observing that the seals placed at the time of search were intact. Further, in order to protect the authenticity of the digital evidence being backed up, hash value has been secured with the help of forensic experts. In addition to this, the AO in her remand report submitted that their office is

ready to provide the seized laptop so as to ascertain the authenticity of the excel sheet extracted from V.K.Sasikala's laptop to the appellant in the presence of PCIT, Central-2, Chennai and CIT(Appeals).

5.5 In this background, the plea of the appellant about the reliance of the information contained in the excel sheet which was extracted from the seized electronic device is not a valid reliance, is dismissed. The investigation officer has correctly followed the standard operating procedure as per the Rule 112(6) of the I.T.Rules. In view of this, the reliance made by the AO in the assessment order is legally tenable.

5.6. The objections raised by the appellant in respect of the remand report have been examined. The objections are only after thought and it was made to suit the appellant's convenience. The same is not supported by evidence. In view of this, the objections raised by the appellant upon the remand report submitted by the AO is not addressed.

5.7 The next issue raised by the appellant is that the document seized without signature is a dumb document and cannot have documentary value and in view of this, relying upon such a document and making such addition in the assessment order is not valid. In this regard, the appellant has relied upon the decision of the Apex Court in the cases of Common Cause and Others Vs Union of India and others Order dated January 11,2017 passed in I.A.Nos. 3 and 4 of 2017 in WP (Civil) No. of 505 of 2015 and the decision rendered in the case of CBI v.V.C.Shukla [1998] 3 SCC 410.

5.8 The various principles laid down in these cases cannot be applied to income-tax proceedings as the decision was rendered under the Prevention of Corruption Act in the context of Sec.34 of Evidence Act. It is a settled principle that the provisions of Evidence Act do not apply to income-tax proceedings but the Tax Authorities are not precluded from invoking the principles of Evidence Act whenever a need arises as per the decision of the Supreme Court in the case of Chuharmal v. CIT [1988] 38 Taxman 190 (SC). In this background, the decisions relied upon by the appellant in the case of Common Causes and Ors and V.C.Shukla case will not apply to the facts and circumstances of the present case.

5.9 The next issue raised by the appellant is that the provisions of section 69A will not apply to the appellant's case. The AO, while passing the order has relied upon the concrete material evidence in the form of excel sheet titled "ARRAY LAND DEVELOPERS PVT LTD PURCHASED THE FOLLOWING WINDMILLS WITH LAND AS ON" found in the laptop of Smt. V.K.Sasikala and loose sheets page numbered 252 to 258 seized vide annexure no ANN/SP/VKS/Office/LS/S were seized in the office block of 'Veda Nilayam' residence of Smt. V.K.Sasikala. Thus, the evidences found about the cash payment and receipt of the confirmation of such amount proved the payment of cash by the appellant. This cash is treated as unexplained money by the AO since the cash payment was made in, acquiring the windmills during the financial year 2016-17 relevant to the A.Y.2017-18 as per the provisions of section 69A of the Act. The findings made by the AO in respect of the money utilized are in order and accordingly the grounds raised by the appellant upon this issue are dismissed.

5.10 The next issue raised by the appellant is that the assessments were made on presumption and assumption. The AO has relied upon the extracts taken up from the laptop seized as per Annexure ANN/SS/DG/ED/S-2 from the residential

premises of D.Shakila (a close relative of V.K.Sasikala) and the page no. 252 to 258 of loose sheets seized as per Annexure ANN/SP/VKS/OFFICE/LS/S- volume 2, during the course of search at the office block of "Veda Nilayam", old No.36, New No.81, Poes Garden, Chennai. The AO has analysed both the seized documents and after making an elaborate discussion made the addition. In view of this, the contention of the appellant that the assessment was made upon assumption and presumption is wrong and contrary to the facts of the case. In this background, the grounds raised by the appellant upon this issue are **dismissed**.

5.11 The next issue raised by the appellant is Non-application of mind by the AO. While going through the assessment order it can be seen that the AO has analysed the seized records and conclusion was drawn with a reasoning about the undisclosed money that was utilized in making payment towards acquisition of windmill. The order indicates that the addition was made based upon the seized material and application of findings as per the seized material. The decision of the Apex Court relied upon by the appellant in the case of Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 88 (SC) will not apply to the facts of this case since the addition was made based upon the seized material. In view of this, the plea of the appellant that the AO has not applied his mind while passing the order is not based upon correct appreciation of facts. In this background, the grounds raised by the appellant upon this issue are **dismissed**.

5.12 The next issue raised by the appellant is that the Assessing Officer has not verified or examined the other parties involved. While going through the assessment order it can be seen that the AO has analysed the seized records and conclusion was drawn with a reasoning about the undisclosed money that was utilized in making payment towards acquisition of windmill. When the evidence relied upon in the assessment order is strong enough, cross-verification of the same will only fortify the issue hut the same will not be the prime evidence to support the findings of the AO. In view of this, the claim of the appellant that the evidence was not verified with other persons will not be a prime contention and it is only a secondary in nature. In this background, the grounds raised by the appellant upon this issue are **dismissed**.

6. In the result, the appeals for the AYs 2015-16, 2016-17 & 2017-18 are treated as dismissed.

4.7 The Ld. CIT(A) thus rejected the legal grounds urged by the assessee. On merits, it was held that the principles laid down in the cited case laws could not be applied to income-tax proceedings as those decisions were rendered under the Prevention of Corruption Act in the context of Sec.34 of Evidence Act. It is a settled principle that the provisions of Evidence Act do not apply to income-tax proceedings but the Tax Authorities are not precluded from invoking the principles of Evidence Act whenever a need arises as per the decision of the

Supreme Court in the case of **Chuharmal v. CIT [1988] 38 Taxman 190 (SC)**. In this background, the decisions relied upon by the appellant in the case of Common Causes and Ors and V.C. Shukla case will not apply to the facts and circumstances of the present case. Regarding applicability of Sec.69A, the material seized by the department reflected payment in cash by the assessee. This cash is treated as unexplained money. The assessee's allegation that the assessment was made on presumption and assumption was also dismissed on the ground that elaborate discussion was made by Ld. AO in this regard, in the assessment order. Finally, the action of Ld. AO was upheld against which the assessee is in further appeal before us for all the years.

Our findings and Adjudication

5. We find that the basic factual matrix is not in dispute. It is discernible from the records that the assessee group was subjected to search action on 09.11.2017. During the course of search action, a laptop was found which was accepted to be used by one of the directors of the assessee company. In the laptop, an excel sheet was found which contained details of windmill purchased by the assessee from various parties. This sheet, inter-alia, contained the details of parties from whom windmill was purchased, HTSC No., KW details of wind mill, date of purchase, Land cost as per Sale Deed, Machinery Cost including VAT and Total cost which was summation of machinery cost and land cost. The total cost tallied with the total purchase value of the windmills along with the land as per the books of accounts of the assessee. The last column had no title but it mentioned certain

acronyms like “7C95L” etc. Based on certain loose sheets, the term “C” & “L” was understood by Ld. AO as “Crores” and “Lacs” respectively. The same led a suspicion in the mind of Ld. AO that the assessee made cash payment over and above the recorded value and accordingly, impugned additions were made in the hands of the assessee u/s 69A for alleged cash payment. However, it could be seen that the assessee’s representative has, all along, denied having made any such cash payment to the vendors over and above the recorded book value. It has vehemently been submitted that the sheets were not authored by the assessee and the same were merely in the shape of bald proposals which were never carried out. The evidence being relied upon by Ld. AO was in the shape of editable excel sheets which do not convey anything to show that such payment, in fact, was made by the assessee to various vendors. The assessee also submitted that the laptop was personal laptop of major shareholder and on the basis of this sheet alone, the impugned additions could not be sustained in law. Under these circumstances, we are of the considered opinion that the onus had shifted on revenue to controvert the submissions made on behalf of the assessee by bringing on record cogent evidences to controvert the submissions of the assessee. The same could be in the shape of further investigation from the vendors and confronting to them the said material found from the assessee’s premises. However, we find that there is total lack of any further independent investigation on the part of Ld. AO despite the fact that the assessment was made after a considerable period of time and Ld. AO had ample time to carry out such an investigation. The search took place on the assessee on

09.11.2017 whereas the assessment has been framed on 25.12.2019. Except for passing on this information to other AO's, no efforts have been made by Ld. AO to corroborate the stand taken by him. The impugned addition, in our opinion, has been made on mere presumptions and assumptions of cash payment by the assessee which is not backed up by any evidence on record.

6. We find that the only other alleged incriminating material in the hands of Ld. AO is loose sheets numbered as page numbers 252 to 258 which are found from "Veda Nilayam" office Block. The same are already extracted in the assessment order. These sheets are in the shape of certain receipts which do not bear signatures of any party at all and the same are merely in the shape of unsigned documents. In fact, there is no space for signatures of the assessee on these documents. In such a case, reliance on these alleged receipts to support the conclusion was clearly fallacious one and Ld. AO, in our opinion, erred in treating the same as actual receipts. These are merely dumb documents and in the absence of any signatures of any of the parties, the same would not carry any evidentiary value. Therefore, these documents are to be discarded as such and without there being any corroborative evidence to support the same, the same could not be used against the assessee to make the impugned additions.

7. On the basis of given facts, it could be seen that the whole case of Ld. AO rest on single excel sheet and unsigned receipts as found during the course of search action. However, there is no independent investigation or enquiries carried out by Ld. AO from any of the parties

or so-called suppliers. There is nothing on record which establish that Ld. AO issued any notices to any of the suppliers to corroborate the alleged incriminating material. In the absence of any such an exercise, it could not be assumed that the assessee made alleged cash payment to various suppliers. It is trite law that no addition could be made merely on the basis of presumption, conjectures and surmises.

8. Upon perusal of loose sheets as extracted in the assessment order, we find that these papers do not bear signature of any of the parties and the same are merely in the shape of dumb documents only. These documents, on standalone basis, could not establish the factum of alleged cash payment. The assessee, all along, denied having made any cash payments and therefore, the onus was on revenue to controvert the stand taken by the assessee and bring on record any cogent / concrete material to rebut the same. However, nothing of that sort as done by Ld. AO has been shown to us. In the present case, the assessee has dis-owned this document and thus, the onus was on revenue to establish that this document belonged to the assessee and the contents of the same were duly supported by corroborative evidences. In the absence of such an exercise, no arbitrary addition could be made on the basis of a printed dumb documents or loose papers in the absence of any independent and corroborative material or evidence on record. The Ld. AO was obligated to establish the factum of cash payment beyond doubt. Additions could not be made simply on the basis of loose unsigned and undated sheets. These sheets were to be considered in the nature of 'dumb document' only having no evidentiary value and could not be taken as the sole basis to

make impugned additions. This is further evidenced by the fact that the assessee has not made any purchases from 3 suppliers which have been listed in the excel sheet. One of the parties even ceased to exist in 2007. The alleged payment made to Sarvana Group do not match in the excel sheet and loose sheets. The assessee furnished confirmation of accounts from couple of vendors which remain to be controverted by lower authorities. Thus, there are glaring contradictions even in the excel sheet and loose sheets. Therefore, on the given facts, the stand taken by lower authorities could not be endorsed.

9. Proceeding further, it is trite law that in case of search proceedings, the additions are to be based solely on the basis of incriminating material found during the course of search operations. Guess work or estimation or extrapolation of income is not permissible unless there are strong evidences to suggest otherwise. The additions are to be based solely on tangible material and not on the basis of estimations or extrapolation theory. This principle supports the case of the assessee.

10. The aforementioned legal position is duly supported by the judgment of Hon'ble Supreme Court in case of **CBI v. V.C. Shukla (1998 3 SCC 410)** wherein it was held that any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction. The Hon'ble Court observed that 'Book' ordinarily mean a collection of sheet or papers or other material, blank or written or printed, fastened or bounded together so as to form a material as a whole. Loose sheets

are scraps of papers cannot be termed as books for they can easily be detached and replaced. Therefore, these are not admissible evidences. Similar is the subsequent decision of Hon'ble Supreme Court in **Common Cause v. UOI, [2017] 77 Taxmann.com 245** wherein it was reiterated that only when the entries are in the books of account regularly kept, would be admissible. Guess work is not possible in case of search proceedings and it is not permissible to assess the undisclosed income in the absence of any evidence. The unsubstantiated loose sheets cannot be considered as conclusive evidence to make additions of undisclosed income. We are of the opinion that all these principles would equally apply to the case of the assessee even though Ld. CIT(A) has rejected the same.

11. The Hon'ble High Court of Delhi in the case of **CIT vs. Kulwant Rai (163 Taxman 585; 13.02.2017)** held that since the assessee did not sign the agreement, no liability could be attributed qua the agreement towards the assessee and therefore, the additions made by AO was based on surmises, guess work and accordingly, liable to be deleted. The mere fact that the agreement was found from the possession of the assessee could not lead to any conclusion. While adjudicating the same, the Hon'ble Court relied on the decision of Hon'ble Supreme Court in the case of **Dhakeswari Cotton Mills Ltd. (26 ITR 775)** which held that AO was not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment order. Similar is the decision of same court in **CIT vs. Akme Projects Ltd. (42 Taxmann.com 379)** wherein it has

similarly been held that the additions made on the basis of unsigned draft agreement could not be sustained when AO had not made any investigation. The draft agreement could have been the starting point of investigation and further detailed verification which had not been carried out. The Hon'ble High Court of Madras in the case of **CIT vs. Kalyanasundaram (155 Taxman 454)** held that where AO did not conduct any independent enquiry relating to value of property and merely relied on the statement of seller, the additions could not be sustained. The Hon'ble High Court of Gujarat in the case of **CIT vs. Maulikkumar K. Shah (307 ITR 137)** similarly held that noting in the seized dairy found from the premises could not lead to additions since AO had not brought any corroborative material to support the same. The onus heavily lay on the revenue to prove with corroborative evidence that the entries in the seized dairy actually represented the sale made by the assessee, Such onus was not discharged by the revenue and therefore, mere entries in the seized material was not sufficient to prove that the assessee indulged in such a transaction. The inference of Ld. AO was merely based on suspicion and surmise and there was no material to prove the same. The additions made by AO being based on mere presumptions and assumptions and without any corroborative evidence, could not be sustained.

12. In the decision rendered by Vishakhapatnam Bench of Tribunal in the case of **Bhavanasi Yella Rao (ITA Nos.265/Vizag/2017 & ors. dated 19.01.2018)**, it was similarly held that once the assessee denies the document and it does not bear the signatures, the burden shifts on the department to establish that the contents of the document are true.

Without any evidence to establish that there was a case for passing on the extra consideration, the consideration recorded in the sale deeds could not be ignored and it was for AO to establish that the recorded consideration was not correct. In the absence of signature of the purchaser, the agreement could not be held to be a valid agreement. There should be an offer and acceptance for a valid agreement. While rendering the decision, the bench relied on the decision of Hon'ble A.P. High Court in the case of **R. Nalini Devi vs. CIT (ITA No.232 of 2013 dated 10.07.2013)**. Similar is the decision of Indore Tribunal in **DCIT vs. M/s Signature Colonisers, Bhopal (ITA No.218/Ind/2020 & ors. dated 21.12.2021)** wherein it was held that the unsigned draft agreement could not be used against the assessee in the absence of any independent cogent evidence. The bench referred to various case laws on the issue and held that additions made on the basis of dumb unsigned documents could not be sustained. The other decision as placed on record lay down similar proposition and support the case of the assessee.

13. Another fact is that Ld. AO has invoked the provisions of Sec.69A which provide for addition in case the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of accounts maintained by the assessee. However, in the present case, no such money, bullion, jewellery or other valuable article has been found from the assessee. The Ld. AO is merely alleging payment in cash over and above the recorded value which is not covered under the provisions of Sec.69A. Therefore, the provisions of Sec.69A, in our opinion, would not apply to the facts of

the present case. On this score also, this addition is liable to be deleted.

14. Finally, on the given facts and circumstances, we are of the considered opinion that the impugned additions are not sustainable in any of the years. By deleting the same, we allow the appeals of the assessee. The Ld. AO is directed to recompute the income of the assessee in terms of our above order.

15. All the appeals stand allowed.

Order pronounced on 9th June, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 09-06-2023
DS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF