

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BANGALORE**

**BEFORE SHRI. SUNIL KUMAR YADAV, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

<b>ITA No. &amp; Assessment Year</b>	<b>Appellant</b>	<b>Respondent</b>
1147/Bang/2012 2007-08	Assistant Commissioner of Income Tax, Central Circle-2(3), Bengaluru.	Shri. P. Shyamaraju, No. 343, IV Main, Upper Palace Orchards, Sadashivanagar, Bengaluru-560080. <b>PAN : AIOPP 2600 D</b>
1148/Bang/2012 2007-08	Assistant Commissioner of Income Tax, Central Circle-2(3), Bengaluru.	Shri. Umesh Raju, No. 343, IV Main, Upper Palace Orchards, Sadashivanagar, Bengaluru-560080. <b>PAN:ARMPS 9147 H</b>
1149/Bang/2012 2007-08	Deputy Commissioner of Income Tax, Central Circle-2(3), Bengaluru.	Smt. Arati Raju, No. 32, 1 <sup>st</sup> A Cross, RMV Extension, Bengaluru-560080. <b>PAN : ADLPR 7952 G</b>
1150/Bang/2012 2007-08	Deputy Commissioner of Income Tax, Central Circle-2(3), Bengaluru.	Shri. Bhaskar Raju, No. 32, 1 <sup>st</sup> A Cross, RMV Extension, Bengaluru-560080. <b>PAN : ABJPR 0744 C</b>
1170/Bang/2012 2007-08	Shri. P. Shyamaraju <b>PAN : AIOPP 2600 D</b>	Assistant Commissioner of Income Tax, Central Circle-2(2), Bengaluru.

Revenue by : Dr. P. V. Pradeep Kumar, Addl.CIT  
Assessee by : Shri. Narendra Sharma, Advocate

Date of hearing : 20/07/2018  
Date of pronouncement : 14/08/2018

**O R D E R**

***Per Sunil Kumar Yadav, JM :***

These appeals are preferred by the Revenue as well as the assessee against the common order passed by the CIT(A) in the case of all the assessees. Since the grounds raised in these appeals are interconnected we prefer to adjudicate them through this consolidated order for the sake of convenience. We however extract the grounds raised in these appeals as under:

2. **ITA No. 1147/Bang/2012**

1. *The order of Learned CIT(A) is opposed to law, equity, weight of evidence on record, facts and circumstances of the case .*
2. *The Ld CIT(A) erred in deleting the addition of Rs.27,66,72,634/- for A.Y. 2007-08.*
3. *The learned CIT (A) has called for a remand report by specifically directing the Assessing officer to procure the documents of ownership of the said lands from the concerned Sub-Registrars Offices. In the net result, the learned CIT (A) has obfuscated the fact finding and erred in allowing the appeal as the assessment order itself does not state that the assessee has registered the lands in his name, but has paid advances towards the purchases of the same, and the addition is on account of such, concealed income paid as advances towards purchase of the land.*
4. *The learned CIT(A), ought to have appreciated the fact that the document A/VSM/16 also contains certain correct entries on various other land transactions, affirmed by the assessee himself and is therefore selectively disputing the facts on the above issue. This is not an acceptable stand, in view of the judgment by the Hon'ble Gauhati High Court in Kamal Kumar Saharia vs CIT(1995) 216 ITR 217.*
5. *The learned CIT(A), ought to have appreciated the fact that the e-mail correspondence addressed to Sri. Bhaskar Raju by Sri A.V.Singh of M/s Cushmen and Wakefield clearly stated that the gross sale price of the impugned property is at the rate of Rs. 2850/-*

*per square feet resulting in a gross consideration of Rs.43.89crores with the fee payable to Cushmen and Wakefield at the 2% of sale consideration being Rs.87,78,000/- plus services charges.*

6. *The learned CIT(A), ought to have appreciated the fact that at the time of the said email dated 16.12.2004 for which the brokerage has been computed and paid, the company mentioned in the email does not exist at all. At a subsequent date on 24.3.2005 the assessee as given the transaction of colour of sale of company so as to conveniently avoid capital gains with a balance sheet drawn for the said company at negative network of Rs.19,155/-,. Whereas the word of the company Chatur Realtors Pvt. Ltd is much more as discussed in the assessment order wherein the said company is the owner of real estate property in prime location leased out on a long term basis to a multinational company for a substantial lease rent.*
7. *The learned CIT(A), ought to have appreciated the fact that the above shows that the transfer of shares of Rs.2lakhs by the said Chatur Realtors Pvt. Ltd. to the assessee is only a colorable device and reliance is placed on decision of the Hon'ble Apex Court in the case of M/s McDowell and Co. Ltd. V. Commercial Tax Officer reported in 154 ITR 148.*
8. *The Appellant craves to add alter substitute, modify and delete, any or all the grounds of appeal urged above.*

### **3. ITA No. 1148, 1149/Bang/2012**

1. *The order of Learned CIT(A) is opposed to law, equity, weight of evidence on record, facts and circumstances of the case .*
2. *The Ld CIT(A) erred in deleting the addition of Rs. 10,96,05,979/- for A.Y. 2007-08.*
3. *The learned CIT(A), ought to have appreciated the fact that the e-mail correspondence addressed to Sri. Bhaskar Raju by Sri A.V.Singh of M/s Cushmen and Wakefield clearly stated that the gross sale price of the impugned property is at the rate of Rs. 2850/- per square feet resulting in a gross consideration of Rs.43.89crores with the fee payable to Cushmen and Wakefield at the 2% of sale consideration being Rs.87,78,000/- plus services charges.*

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4. *The learned CIT(A), ought to have appreciated the fact that at the time of the said email dated 16.12.2004 for which the brokerage has been' computed and paid, the company mentioned in the email does not exist at all. At a subsequent date on 24.3.2005 the assessee as given the transaction of colour of sale of company so as to conveniently avoid capital gains with a balance sheet drawn for the said company at negative network of Rs.19,155/-,. Whereas the word of the company Chatur Realtors Pvt. Ltd is much more as discussed in the assessment order wherein the said company is the owner of real estate property in prime location leased out on a long term basis to a multinational company for a substantial lease rent.*
  
5. *The learned CIT(A), ought to have appreciated the fact that shows that the transfer of shares of Rs.2 lakhs by the said Chatur Realtors Pvt. Ltd. to the assessee is only a colorable device and reliance is placed on decision of the Hon'ble Apex Court in the case of M/s McDowell and Co. Ltd. V. Commercial Tax Officer reported in 154 ITR 148.*

*The Appellant craves to add alter substitute, modify and delete any or all the grounds of appeal urged above.*

**4. ITA No. 1150/Bang/2012**

1. *The order of Learned CIT(A) is opposed to law, equity, weight of evidence on record, facts and circumstances of the case .*
2. *The Ld CIT(A) erred in deleting the addition of Rs. 2,43,56,884/- for A.Y. 2007-08.*
3. *The learned CIT(A), ought to have appreciated the fact that the e-mail correspondence addressed to Sri. Bhaskar Raju by Sri A.V .Singh of M/s Cushmen and Wakefield clearly stated that the gross sale price of the impugned property is at the rate of Rs. 2850/- per square feet resulting in a gross consideration of Rs.43.89crores with the fee payable to Cushmen and Wakefield at the 2% of sale consideration being Rs.87,78,000/- plus services charges.*
4. *The learned CIT(A), ought to have appreciated the fact that at the time of the said email dated 16.12.2004 for which the brokerage has been computed and paid, the company mentioned in the email does not exist at all. At a subsequent date on 24.3.2005 the assessee as given the*

*transaction of colour of sale of company so as to conveniently avoid capital gains with a balance sheet drawn for the said company at negative network of Rs.19,155/-,. Whereas the word of the company Chatur Realtors Pvt. Ltd is much more as discussed in the assessment order wherein the said company is the owner of real estate property in prime location leased out on a long term basis to a multinational company for a substantial lease rent.*

5. *The learned CIT(A), ought to have appreciated the fact that the above shows that the transfer of shares of Rs.2 lakhs by the said Chatur Realtors Pvt. Ltd. to the assessee is only a colorable device and reliance is placed on decision of the Hon'ble Apex Court in the case of M/s Mc dowell and Co. Ltd. V. Commercial Tax Officer reported in 154 ITR 148.*
6. *The Appellant craves to add alter substitute, modify and delete any or all the grounds of appeal urged above.*

#### **5. ITA No. 1170/Bang/2012**

1. *The order of the learned authorities below in so far as it is against the appellant is opposed to Law equity, weight of evidence, probabilities, facts and circumstance of the appellant's case.*
2. *The order of assessment passed under the provisions of section 143(3) is bad in law void abinitio as the mandatory conditions for invoking the said provisions did not exist and further the mandatory conditions that are essential to invoke the said provisions have not been complied with and consequently she impugned assessment deserves to be cancelled.*
3. *The authorities below further failed to appreciate that the assessment is bad in law as it has been done pursuant to an alleged search and unless it is demonstrated that there exists a legal and a valid search the question of invoking the provisions of section 153 A of the Income Tax Act does not arise. Further, the mandatory conditions specified in terms of Section 132(1) of the I.T. Act did not exist and therefore, the search action itself is illegal and under such invalid search, the impugned assessment order consequently deserves to be cancelled.*
4. *The CIT(A), erred in sustaining a sum of Rs.69,01,111/- as the unexplained cash etc., found during the course of search and assessing the same in the hands of the appellant. The authorities below failed to appreciate that the cash found during the course of search was fully explained and accounted in the statement of affairs for the previous*

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*year relevant to the Assessment year under appeal which has not been contraverted by the A.O. The additions sustained was purely on the basis of a letter dated 20/08/2007 which had been subsequently retracted by the appellant and thus the impugned addition requires to be deleted in full.*

5. *Without prejudice the rate of interest u/s 234 B levied is also not discernable from the orders nor the period of levy is discernable from the orders and both the rate and period are prima facie not in accordance with law.*
6. *The said levy is contrary to the reasoning of the jurisdictional High Court in the case of T.P.Indira Kumar in 29 DTR 311.*

*For the above and other grounds that may be urged at the time of hearing of the appeal the appellants prays that the appeal may be allowed and justice rendered.*

6. The facts in brief borne out from the record are that a search was conducted on 01.03.2007 on Divyashree Group. Consequent to the search, AO has issued notice under section 153A of the Income-tax Act (hereinafter called as an 'Act') for the assessment year 2001-02 to 2006-07 and notices under section 143(2) and 142(1) of the Act for the impugned assessment year i.e., 2007-08 and for the framed assessment under section 143(3) r.w.s. 153A of the Act for the assessment year 2001-02 to 2006-07 and for the assessment year 2007-08 under section 143(3) of the Act vide order dated 31.12.2008. Appeals preferred for the assessment years 2004-05 to 2006-07 were finally disposed off by the Tribunal annulling the assessment vide order dated 06.01.2012. While completing the assessment for the assessment year 2007-08, the AO has examined the seized documents in the light of explanations furnished by the assesseees and he made an addition of Rs.5,05,59,564/- on account of unexplained investment in the small lands as per para A(14) of the assessment order and an addition of Rs.69,01,111/- as unexplained cash found and seized during the course of search apart from other miscellaneous items as per para C of the assessment order in the case of Shri. P. Shyamaraju. The AO has also

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noticed from the seized material that a sum of Rs.46,27,80,809/- has been received by the assesseees as premium on sale of M/s. Chathur Realtors Pvt. Ltds., as per para B(19) of the assessment order assessing the assesseees as indicated hereunder:

a) Shri. P. Shyamaraju	Rs.21,92,11,959/-
b) Shri. Umesh S. Raju	Rs.10,96,05,979/-
c) Shri. Bhaskar	Rs. 2,43,56,884/-
d) Smt. Arati B. Raju	<u>Rs.10,96,05,987/-</u>
	Rs.46,97,80,809/-

7. Aggrieved with the assessment order, assessee preferred an appeal before the CIT(A) and being convinced with the explanations of the assessee, the CIT(A) had deleted the additions made in the case of Shri. Umesh S. Raju, Shri. Bhaskar, Smt. Arati B. Raju.

8. Aggrieved with the order of the CIT(A), the Revenue is in appeal before us in all these cases. So far as Shri. P. Shyamaraju is concerned, the CIT(A) had deleted the additions of Rs.5,05,59,564/- made on account of unexplained investments in usman lands and an addition of Rs.21,92,11,959/- as premium received on sale of shares in M/s. Chathur Realtors Pvt. Ltd. The CIT(A) however confirmed the addition of Rs.69,01,111/- made on account of cash found and seized during the course of search.

9. Aggrieved with the order of the CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal. Therefore, we have to adjudicate mainly 3 issues, (i) Addition made on account of unexplained investment in usman land (ii) Additions made on account of unexplained cash found and seized during the course of search (iii) Additions made on account of receipt of

premium on sale of shares in M/s. Chathur Realtors Pvt. Ltd. We, therefore, prefer to adjudicate these 3 issues one after the other.

**10. Addition on account of unexplained investment in ‘Usman’ lands:**

The facts borne out from the record in this regard are that during the course of search, documents named New Folder/Enter/VSM/Usman/Usman-1/Usman/Lot 108, New Folder/Enter/VSM/Usman/Usman-1/Usman/Lot 2/200, New Folder / Enter / VSM / Usman / Usman-1 / Usman / Lot 3 / 000 and New Folder/Enter/VSM/Usman/Usman-1/Usman/ Phase II were seized as part of pendrive in question (A/VSM/16). The details of survey number, total cash payments against them as reflected therein against those 4 documents are mentioned as per Annexure-1C of the assessment order. During the course of assessment proceedings, assessee was asked to explain the cash payments entries as against the purchase of the said lands. During the course of assessment proceedings, copies of seized material were supplied to the assessee at different points of time. Assessee has taken a stand before the CIT(A) that the pen drive was not seized either from the residence of the assessee, his family members or from the residence of the Directors of the Group entities. During the course of assessment proceedings, the seized material was also examined by Shri. V. Sambamoorthy on behalf of the assessee. It was explained by the assessee that the figures were placed for projections and not connected with the factual position on hand and futuristic in nature and content. It was also contended that data was fed into the computer by some disgruntled Employees (3 in numbers) with malafide intentions out of them one employee had since passed away and other 2 had left the organisation. Though it was stated that this pen drive does not belong to Shri. V. Sambhamoorthy as well as GM, Finance, of the assessee group but the fact remains that this pen drive was seized from the residence of Shri.

Sambhamoorthy, GM (Finance) of the assessee group. The AO has examined the explanations of the assessee and the material seized during the course of search and came to the conclusion that the cash payment reflects the seized documents, are outside the books and the same represents concealed income in the hands of the assessee. The relevant observation of the AO is extracted hereunder for the sake of reference:

**“5. Analysis of the assessee's claims:**

1. *The issue of "disgruntled employees" which has again featured in the assessee's has been examined and discussed on merit in para dealing with capital gain on transfer of companies.*

2. *It may be mentioned that depositions were recorded on 17-4-07 and 18-4-07 on the tents of the pen drive from Shri V.Sambamoorthy , GO. (Finance). On the extracts of documents for land dealing which obviously cover Usman lands , he only stated that the statement is prepared for internal information to be used for costing purposes for the purpose of submission to bank / institution for raising loan and financial assistance (Ans. To Qn.No.8).*

*"Qn.No.11 Survey Nos. Extension of the land, name of the sellers of the land, extension of the land, date of registration, service charges incurred and other expenses incurred have been confirmed by you to be matching with the actuals which are **reflected in your I.T. records. But when it is coming to the cash payment made for purchase of land you are conveniently taking a stand that these are estimates and projections which appears to be too far from the reality and it can be said that you are misleading the facts. Offer your comments?***

*Ans. Hon'ble Sir, as submitted to your goodselves earlier, the statements have been prepared for submission to certain institutions and banks for financial assistance after making certain projections, forecast and proposals with respect to expenses to be incurred on the development of land and obtaining of approvals, clearances from statutory bodies and other incidental expenses relating to making the land fit for use and commercial exploitation. Respected Sir, we once again pray your goodselves not to consider this cash payments as part of the consideration in*

*view of the fact that these payments are purely projections which has been made for the purpose of internal consumption and for raising funds for reflecting an attractive picture for the banks to come forward to offer their financial assistance to us but for which it is difficult for us to bring in the entire capital required for completion of the projects on these lands. Hence, Hon'ble Sir, we once again pray your goodselves not to infer that these payments have been made to the vendors at any point of time and these payments never been made to them which is a fact. Sir, apart from the above, we draw your kind attention to the column pertaining to Sy.No.125 where the proportion of the cheque payment to the vendors was only about 19 lakhs whereas the cash component has been projected in the order of about Rs.96 lakhs which is not all compatible with each other draw any negative inference that both the payments have been made to the vendors for the purchase of the same land. In view of this, Sir, we once again beg to request your goodselves to view the statement from the above perspective..:*

*At no point did the person in possession of the pen drive (Shri V. Sambamoorthy) informed the Department of the contents of the pen drive to be the handiwork of any disgruntled employees. The assessee is now reiterating that the contents were given to Shri V. Sambamoorthy to clean up the files which was the work of the disgruntled employees. But it is significant to note that Shri V. Sambamoorthy never made such a submission himself in course of giving those statements. This is clearly a contradiction.*

*3. The assessee has requested the Assessing officer to cross-verify the vendors if he so wants, to verify the correctness or otherwise of his (assessee's) claim.*

*4. Since the onus lies with the assessee to prove the authenticity of the said entries, he was asked to discharge the 'onus' that of course includes the production of the said vendors vide note sheet dated 19/12/08 before the undersigned. In the show- cause letter dated 24/12/08 also , the assessee was again reminded that he had not discharged his 'onus' in this regard. Till the date of this order, the assessee has not any such vendor nor has given any written submission in this regard. It concluded that the assessee has failed to substantiate his claim as to the cash entries in those documents being incorrect.*

*5. It is, however, to be mentioned that there are many entries in the documents in question which are correct and are verifiable from the*

books of accounts. This being so, there is no ground for the assessee to question the authenticity of the documents including cash entries mentioned therein.

6. The assessee's common contention through the course of the hearings that the lands were purchased by him on behalf of the company, viz., SRIPL in view of the restriction imposed by a state Act on a corporate entity to buy agricultural land, has already been discussed at length in other parts of this order.

7. The assessee, vide his letter dtd. 17/11/08, submitted a chart wherein the year(s) in which the payments are made is/are shown against the particular lands except in the case of the following lands which have not appeared at all in that chart:

**Table-A2**

<i>Lot No.</i>	<i>Lands</i>
<i>Lot No. 1/108:</i>	<i>131/1A ( Rs. 14,87,464)</i>
<i>Lot No. 2/200 137C</i>	<i>131/6 ( Rs. 53,69,600), 131/3 ( Rs. 1,44,81,600), (3,35,600), 137/1 (Rs.44,30,600), 131/5B (Rs.3,35,600), 137/1 (Rs.44,30,600), 131/5B (Rs.78,44,200 and 137/2 (Rs.26,84,800).</i>
<i>Lot No. 3/000</i>	<i>Not applicable</i>
<i>Phase-II</i>	<i>17 NSL ( Rs. 5,75,000), 109NSL (Rs. 31,12,500) , 105 NSL (Rs. 26,38,200) and 106NSL (Rs. 75,00,000), 92/1 (Rs. 7,20,000), 80/1 (Rs. 6,75,000), 89 (Rs. 7,15,000) and 90/1 (Rs.9,90,000), 118/3B (Rs. 6,75,000) and 72/2 (Rs. 1,34,76,375).</i>

8. Going by the date of Cheque payments and in some cases, simply 'paid' date mentioned in Row nos. 21 and 25 of the seized documents in question, the cash payments are considered to have been made in the corresponding F.Y. (In which the of Cheque payment appears, i.e. F.Y. 04-05). The lands which fall in this category (To be called **Category- 2** lands for this limited purpose only) are as under:

**Lot Phase-II** 92/1, 80/1, 89, 90/1, 118/3B and 72/2 ( Total: Rs.1,72,51,375).

9. There is another category ( **Category-3**) of lands which do not appear at all , either in the chart as mentioned above , or in the ledger a/cs given during the assessment proceedings. For these lands , the year of acquisition is taken at F.Y. 06-07 ( A.Y. 07-08) in absence of any details.

10. The lands in this category are those mentioned in **Table-A2** above along with the **category 3** lands.

11. As for the **category-1** lands, the year of cheque payments which is also the year of acquisition ( F.Y. 04-05) is taken to be the year in which the above cash payments were made.

12. It may be mentioned even though the assessee was afforded an opportunity to scan the seized documents and was allowed to take photocopies of the Usman- specific land documents on 11/12/08 , he has failed to give the relevant copies of the land agreements as were asked from him from time to time (Ref: This office letters dtd. 25/9/08, 3/11/08, 1/12/08 etc.).

13. It is to be noted that apart from relying upon the above grounds , [ (a) and (b) above ] , there was no satisfactory reply and production of evidence which makes it possible for the data to be examined and verified in terms of the accounting entries. In view of this , there is no reason to disbelieve the detailed payment entries made said documents. Also , since many of the entries in those seized documents are correct as per records , the ratio of the Hon'ble Gauhati High Court in Kamal Kumar Saharia v CIT ( 1995) 216 ITR 271 can be applied in this case to conclude that the cash payment entries mentioned therein are also correct.

14. Hence , it is concluded that cash payments reflected in the seized documents are outside the books. The same represent concealed incomes in the hands of the assessee as detailed in the following table and are added back to the incomes of the respective A. Y.s( 05-06 and 07-08):

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<i>Description</i>	<i>Assessment year 2006-07 (Financial Year 05-06 ) ( Only for category 1 and 2 lands) Rs.</i>	<i>Assessment year 200607 (Financial Year 05-06 )</i>	<i>Assessment year 2007- 08 (Financial Year 06-07 ) ( Only for category 3 lands)</i>	<i>Total</i>	<i>Remarks*</i>
<i>Cash payments as per Lot 108 (Rs)</i>	3,51,73,703	--	14,87,464	3,66,61,167*	<i>As reflected in Row-11B in Lot 1/108*</i>
<i>Cash payments as per Lot 2/200 (Rs)</i>	10,72,94,530	--	3,52,46,400	14,25,40,930*	<i>As reflected in Row-11B in Lot 2/200*</i>
<i>Cash payments as per Lot 3/000 (Rs)</i>	47,70,000	--	---	47,70,000	<i>As reflected in Row-11B in Lot 3/000*</i>
<i>Cash payments as per Phase II (Rs)</i>	5,22,95,625	--	1,38,25,730	6,61,21,325	<i>As reflected in Row-11B in Suresh Hegde Land – Phase-II (Totalling mistaken taken into account ).</i>
<i>Total</i>	19,95,33,858	--	5,05,59,564	25,00,93,422	

11. Accordingly, the AO has made an addition of Rs.5,05,59,564/- in the hands of the assessee Shri. P. Shyamaraju as a concealed income.

12. An appeal was preferred before the CIT(A) against this addition and during the course of hearing, the CIT(A) called for a remand report from the AO. The AO sought time for submitting the remand report as it requires enquiry from the sub-registrar's office with regard to sale of the land. In the report, the AO has mentioned that lands at Sy. No. 131/1A were purchased by

Austrin Groch who had further dealing with Shri. Shyamaraju Group represented by Shri. Umesh S. Raju. It was also mentioned that in Karnataka, companies are barred from holding lands in Karnataka. Therefore, the company got the land registered in the name of Directors or other individuals. The CIT(A) called for the comments of the assessee in this regard and extracted the submissions of the assessee in his order and relying upon the submissions, the CIT(A) has deleted the entire additions.

13. Aggrieved, the Revenue has preferred an appeal before the Tribunal with the submission that CIT(A) has not examined all the aspects submitted by the AO through its remand report. The transactions found in the seized documents were not found to be incorrect though the land was purchased in the name of some other persons. AO has also placed the evidence before the CIT(A) in its remand report to demonstrate that the persons in whose name the land was purchased belonged to the assessee group. If the CIT(A) has any doubt he could have called for the details from the sub-registrars Office and to find out in whose name the land was purchased and registered and also whether the so called buyers were in the position to purchase the said land. The learned DR however contended that though the AO has made the detailed enquiry but it was not accepted by the CIT(A) without bringing any contrary material on record. When the pen drive was seized from the GM (Finance) of the assessee group, it is all the more necessary to investigate all the entries found therein. If the entries found in the pen drive relating to sale transactions are found to be correct, the cash payment shown in the seized material should be considered to have been paid by the assessee.

Learned Counsel for the assessee placed a reliance upon the order of CIT(A). It was further contended that the AO could not discharge the onus to

prove that assessee has made some payment outside the books to purchase the land.

14. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that pen drive was found during the course of search from the residence of Shri. V. Sambamoorthy, GM (Finance) of the assessee's group (Divyashree Group). The details of entries found in the pen drive were made Annexure to the assessment order. Before the AO, the assessee has taken a stand that the pen drive was neither found from the assessee nor from the Director of the company. Therefore, no cognisance of the same can be taken. We find no merit in these contentions as the pen drive was found from the GM of the assessee group. Moreover, the entries found in his pen drive correlate with the transactions recorded by the sub-registrar's office. Though the AO has stated in his remand report the person in whose name the land was purchased belonged to the assessee's group but this aspect was not examined by the CIT(A). It was also stated by the AO that in Karnataka, the companies are barred from holding lands. Therefore, the company is purchasing lands in the name of the Directors or other individuals. Relevant portion of the remand report is extracted hereunder for the sake of reference:

" Unexplained investment in Usman lands:

*An addition of Rs.5,05,59,564/- was made in the case of Sri.P.Shyamaraju as unexplained investment in these lands. CIT(A) has directed that details of dates of registration of properties shall be obtained. The SRO, Bommanahalli has submitted the details to the undersigned on,15.2.2011 which are made part of this letter as annexure. The details obtained from the SRO, Varthur and Mr.P.Shyamaraju have already been submitted vide remand report dated 7.2.2011.*

*2. On going through the details of the encumbrance submitted by the SRO, it is clear that lands at Sy. No. 131/1A were purchased by Mr. Austin Roach, who had further dealings with Sri.P.Shyamaraju's group. It may be noted here that Mr. Austin Roach had dealings with M/s. Divyasree Infrastructure Projects (P) Ltd represented by Sri. Umesh S. Raju. These transactions were highlighted in the remand report submitted on 8.2.2011 (Kindly refer to para 3 of remand report dated 7.2.2011). It may be highlighted here that the land transaction in Karnataka State usually taken place in following fashion. As, companies are barred from holding lands in Karnataka, the companies register lands in the hands of directors or other individuals. The problems of defective title, tenancy claims, partition claims make it difficult for the buyer to buy lands in single transactions. Usually, an advance amount is paid and final payment is withheld till registration is over. Time is taken to ensure that the title is clear and there are no other claims on the lands. The details of these land were in the pen drive belonging to the assessee. It is clear that the assessee has to explain what was recorded in the pen drive and as the assessee had failed to explain fully to the satisfaction of the AO, this amount was brought to tax in the hands of Mr.P.Shyamaraju, the director of the company.”*

15. From the careful perusal of the remand report, the seized material i.e., Annexure 1C to the assessment order and the rejoinder filed by the assessee, we find that more investigation was required from the sub-registrar's office to find out as to whether the details of land given in the seized material were sold, if sold to whom and whether buyer relate to the assessee group. It is also required to be investigated whether the persons in whose name the land was registered by sub-registrar's office was in a position to buy the land and in fact they

belong to the assessee group. If it is proved that the persons in whose name the land is registered belonged to the assessee, the entries found in the seized materials are correct entries and the addition can be made in the hands of the assessee. Therefore, we are of the view that this issue requires a further investigation and adjudication by the AO. We accordingly set aside the order of the CIT(A) in this regard and restore the matter to the AO to readjudicate the issue in terms indicated above.

**16. Additions made on account of unexplained cash found and seized during the course of search:**

The other issue with regard to addition of Rs.69,01,111/- on account of unexplained cash found and seized during the course of search, the facts borne out from the record are that during the course of search under section 132 of the Act on 01.03.2007, cash of Rs.40,90,000/- was seized from the group entities of the assessee. During the course of assessment proceedings, the AO issued a show cause notice to the assessee proposing to assess a sum of Rs.36,90,000/- on account of cash found and seized during the course of search and further a sum of Rs.7,80,000/- on account of scribbling notings in loose paper seized from the residence of Shri. V.Sambamoorthy apart from miscellaneous items of Rs.24,31,111/- in the hands of the assessee i.e., Shri. P. Shyamaraju. Vide letter dated 29.12.2008 the assessee objected to show cause notice of the AO proposing to assess the said sum by contended that it has fully explained the source of cash found and seized. The AO has taken a note of the letter of the assessee dated 20.08.2008 through which the assessee has admitted that income on account of cash found and seized during search at Rs.36,90,000/-, scribbling notings made in loose papers by Shri. Sambhamoorthy at Rs.7,80,000/- and miscellaneous items at Rs.24,31,111/-. The admission was voluntary and AO has recorded the contents of the letter in his order at page Nos. 31 and 32.

Since there was no justifiable reasons for retraction, the AO has made an addition of Rs.69,01,111/- on account of undisclosed income.

17. Assessee preferred an appeal before the CIT(A) but did not find favour with him. Now the assessee is before the Tribunal with the submission that he has retracted from his earlier statement and more so the surrender was made conditional. Since the Revenue has not accepted the other conditions, the addition cannot be made on the basis of the surrendered statement.

18. The learned DR on the other hand contended that during the course of assessment proceedings, assessee has written a letter to the AO on 20.08.2008 making voluntary surrender of Rs.69,01,111/- under different heads. When the AO has proposed to make addition on account of voluntary surrender, the assessee came up with the objection vide letter dated 29.12.2008, 2 days before the date of assessment order contending therein that the voluntary surrender is subject to certain conditions. If those conditions are not acceptable to the AO, the surrender is deemed to have been withdrawn. The assessee has made the additional surrender when he was cornered with the seized material and the cash seized during the course of search. He came out with a voluntary surrender but did not pay tax thereon. Therefore, the AO was constrained to make addition on account of voluntary surrender.

19. Having carefully examined the orders of authorities below in the light of rival submissions, we find that the assessee has made voluntary surrender during the course of assessment proceedings on account of cash found and seized during the course of search, scribbings, notings in loose paper seized from the residence of Shri. P. Samba Moorthy and on account of other miscellaneous items. The search was conducted on 01.03.2007 and the voluntary surrender was made vide letter dated 20.08.2008. Therefore, it

cannot be said that surrender was made under duress or under influence of threat or pressure. The objection to surrender was filed on 2 days before the date of assessment order. Therefore, we are of the view that assessee has made the surrender when he was cornered with the cash and incriminating material seized during the course of search. Therefore, we find no infirmity in the order of the CIT(A) who has rightly confirmed the additions.

**20. Additions made on account of receipt of premium on sale of shares in M/s. Chathur Realtors Pvt. Ltd.**

The last ground is with regard to additions of Rs.46,27,80,890/- added as a concealed income on account of sales of Chathur Realtors Pvt. Ltd., in the hands of the assessee. The facts borne out from the record in this regard are that during the course of search, a pen drive containing details were seized from the residence of Shri. V. Sambhamoorthy on the basis of the contents of the pen drive of Shri. P. Shyamaraju was queried by the AO in respect of certain shares sold by the assessee in relation to Chathur Realtors Pvt. Ltd., by furnishing certain seized material therein and calling for explanation of the same. The AO noticed that Divyashree i.e., assessee group had entered into an agreement on 19.08.2004 to construct a building for one company called I2 Technologies on a land owned by Divyashree group located at Airport Road, Bangalore. There was also preagreed monthly rent agreement according to which I2 Technologies agreed to pay to Divyashree for the building once it was constructed. The AO has also taken a note of a letter of M/s. Cushman and Wakefield which was filed before the ADIT (Investigation) during the course of said proceedings. Through this letter, authorisation was given to M/s. Cushman and Wakefield to identify the buyer who is interested in purchasing the company that owned land parcel on which building was constructed for I2 Technologies. Accordingly, the company was transferred to ML Group as per the following details:

**Transfer of shares for Chathur Realtors (P) Ltd.,**

<b>Sl. No.</b>	<b>Name of the Transferee (ML Group and its entities)</b>	<b>Name of the Transferor (Divyasree Group &amp; its entities)</b>	<b>No. of shares transferred</b>	<b>Consideration (in Rs.)</b>	<b>Cheque No., date &amp; the Drawee Bank</b>
1.	M/s. K. S. Subbaiah Pillai & Co. (India) Ltd.,	Mr. Bhaskar N. Raju	100	10000	783276, dtd. 06.04.06 – Indian Overseas Bank, Koramangala Layout.
2.	Sri. Maddi Lakshmaiah	Mr. P. ShyamaRaju	15	1500	783281, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
3.	Smt. Maddi Seethadevi	Mr. P. Shyama Raju	10	1000	783282, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
4.	Sri. Maddi Venkateswara Rao	Mr. P. Shyama Raju	25	2500	783283, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
5.	Sri. Maddi Rmaesh	Mr. P. Shyama Raju	15	1500	783284, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
6.	Sri. Maddi Radhika	Mr. P. Shyama Raju	20	200	783285, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
7.	M/s. K. S. Subbaiah Pillai & Co. (India) Ltd.,	Mr. P. Shyama Raju	15	1500	783286, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout
8.	M/s. K. S. Subbaiah Pillai & Co. (India) Ltd.,	Mr. P. Shyama Raju	800	80000	783777, dtd. 06.04.06 – India Overseas Bank, Koramangala

9.	<i>M/s. K. S. Subbaiah Pillai &amp; Co. (India) Ltd.,</i>	<i>Mr. Umesh S. Raju</i>	450	45000	<i>Layout 783278, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout</i>
10.	<i>M/s. K. S. Subbaiah Pillai &amp; Co. (India) Ltd.,</i>	<i>Smt. S. Arati</i>	450	45000	<i>Layout 783279, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout</i>
11.	<i>M/s. K. S. Subbaiah Pillai &amp; Co. (India) Ltd.,</i>	<i>M/s. Shyamaraju &amp; Co. (India) Pvt. Ltd.</i>	100	10000	<i>Layout 783280, dtd. 06.04.06 – India Overseas Bank, Koramangala Layout</i>
			2000	200000	

21. But from the seized records B/SEPL/123 which was made Annexure 8, 9, 10 to the assessment order, the sale consideration adopted was in fact much more than the disclosed sale consideration. The AO has examined the seized material relating to transfer of shares in different names and came to the conclusion that there was a transfer of consideration of Rs.48,71,37,686/- as against the recorded amount of Rs.2,00,000/-. Accordingly, the entire sale consideration was allocated amongst the shareholders as per their share holdings in M/s. Chathur Realtors Pvt. Ltd. Accordingly, the following additions are made in the hands of the assessee.

1. Shri. P. Shyamaraju	Rs.21,92,11,959/-
2. Shri. Umesh Raju	Rs.10,96,05,979/-
3. Shri. Bhaskar Raju	Rs. 2,43,56,884/-
4. Smt. Arati Raju	Rs.10,96,05,979/-

22. Aggrieved, the assessee preferred an appeal in all these cases before the CIT(A) and being convinced with the contentions of the assessee, the CIT(A) has deleted the additions in the case of all these assesseees. Aggrieved, the

Revenue has preferred an appeal against the order of the CIT(A) in all these cases before the Tribunal.

23. The learned DR invited our attention to the fact that the AO has examined the seized material where from it was evident that sale consideration adopted was in fact much more than the disclosed sale consideration. While doing so, the AO has examined the correspondence exchanged between Mr. Bhaskar Raju, Executive Director of Divyashree and M/s. Cushman and Wakefield India Pvt. Ltd., and letter exchanged between M/s. Cushman and Wakefield and Mr. Ramanand, Representative of ML Group entities. From reading of this correspondence it is quite evident that the gross consideration was at Rs.43.89 lakhs for a total area of 154000 sq. ft. and gross sale price at Rs.2850 per sq.ft. On the sale consideration, the commission was paid at 2% to M/s. Cushman and Wakefield for arranging the sale transaction between the appellant and the ML group. These documents do not support the contentions of the assessee that there was only transfer of shares of the company. The learned DR further contended that if the factum of the evidence is to be examined, there would be no force in the arguments of the assessee that after taking over the liability along with the property, share value of Rs.100/- came down to Rs. (-)19,397/- and assessee has sold the shares at Rs.100/- per share, earning capital gain thereon. The learned DR also invited our attention to certain facts borne out from the assessment order in order to demonstrate that deal got closed in December, 2006 and before that the agent has charged commission in December 2004 which was much before the actual transaction of transfer of shares which took place in 2006. The documents relating to transfer of shares, property and their agreements were not produced before the AO despite repeated requests. The documents seized were indeed agreement with regard to sale of campus being built for and leased to I2 Technologies India Pvt. Ltd., with the Divyashree Technopolis land. The learned DR further contended that the company M/s. Chatur Realtor Pvt. Ltd., was actually

owning real estate property in the prime location which had also been leased on longterm basis to multi national company on substantial rental basis. It was further contended that if the assessee's contention that intrinsic value of the shares is in negative figure at Rs. (-)19,397/-, and the shares were sold at much higher at Rs.100/- to the members of the ML Group is accepted there would be a sale consideration of Rs.43.89 crores on which commission of Rs.87,78,000/- was paid to M/s. Cushman and Wakefield India Pvt. Ltd. All these aspects required proper investigation and examination by the AO. Though AO has taken cognisance of all these facts while making an addition, the CIT(A) deleted the same having accepted the contentions of the assessee. The learned DR further contended that in such circumstances, contention of the assessee is required to be examined and cannot out rightly be accepted for deleting the additions.

24. Having carefully examined the orders of authorities below in the light of rival submissions, we find that during the course of search, certain incriminating material was seized and on the basis of which the AO has drawn inference. The seized material formed part of the assessment order as Annexure 8, 9 and 10. The inference drawn by the AO is extracted hereunder for the sake of reference:

*"i) 3/SCPL/1 -[ Page-52 -- It is an invoice dtd. 16/12/04 , addressed to Shri Bhaskar Raju, the Executive Director of the group ]*

*Gross sale price - Rs.2850/- per sq.ft. for total area 154000 sq.ft.*

*Gross consideration Rs.43.89 crores*

*Fee payable to Cushman and Wakefield for effecting the transfer- Rs.87,78,000/- + service charge.*

*The relevant extract of the document (a copy also given in Annexure 8) in question is as under:-*

*"This is further to our various meetings and discussions on the subject, and has reference to the Letter of Intent signed between Shyamaraju Co., India*

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*Pvt. Ltd.,(SRIPL) Pillai and Co., India Ltd., (KSSPCIL) dtd. November 20th, 2003, in respect of the sale of the Campus being built for and leased i2 Technologies India Private Limited, in your project Divyasree Technopolis located off Airport Road, and further reference to the Agreement dated September 23rd , 2004 signed between SRIPL, the land owners an WI-Group.*

*You would recall that by way of counter-signing our letter dtd. 05th December, 2003, you have confirmed the following professional fee payable to us:*

*\*2% of the gross purchase/sale consideration  
\*Service tax on the above fee at the rate applicable (Currently the rate is 10.2% along with the surcharge).”*

*There is a mention of a letter of intent signed between Shyamaraju Co., India Pvt. Ltd., and K.S.Subbaiah Pillai and Co., India Ltd., dtd.20.11.2003, in respect of the sale of the Campus built for i2 Technologies and also an agreement dtd.23.09.2004 between Shyamaraju Co., India Pvt.Ltd., the land owners and ML Group.*

*(ii) B/SCPL/2 - A letter (e-mail) to Mr.A.B.Singh from Mr.P.Ramanand where the purchase consideration is mentioned at Rs.4389 lakhs at Rs.2850 per sq.ft for 154000 sq.ft. as detailed below:*

<i>Purchase consideration</i>	<i>Rs.4389 lakhs</i>	
<i>Less: Advance paid to SRIPL</i>		
<i>On 29.11.2003</i>	<i>Rs.20 lakhs</i>	
<i>Advance on 23.09.2004</i>	<i>Rs.430 lakhs</i>	
<i>Advance rent received from I2 Technologies</i>	<i><u>Rs.866.25 lakhs.</u></i>	
<i>Total</i>	<i>Rs.3072.75 lakhs</i>	<i>- A</i>
<i>Less: Interest @ 12% per annum</i>	<i>Rs.</i>	
<i>On Rs. 450 lakhs from</i>		
<i>15.01.2005 till handover.</i>		<i>- B</i>
<i>Net balance payable</i>		<i>(A-B)</i>

*The correspondence further mentions of the avoidance on capital shares which is reproduced below as to its relevant portion:*

***What would be the amount payable to these shareholders? May be the face value of shares in order to avoid capital gains on sale of shares to our group members.***

*(iii) B/SCPL/3 (Page-38) - A reconciliation of payments which shows consideration at Rs.50,20,09,183/-.*

*Besides the above, there is a seized document B/SCPL/40 (page 16) which shows sale consideration at Rs.2,850/- with an advance of Rs.4,50,000/- (can be traced above,), security deposit of Rs.8,82,89,438/- (rental deposit).”*

25. The Inference drawn by the AO was confronted to the assessee and the assessee has come out with a plea that the real estate agent M/s. Chathur Realtor Pvt. Ltd., like any other agent charged commission on the proposed value of the shares of Rs.43.89 crores much before the initiation of the transaction during December 2004 which was in fact 2 years earlier in time than the transfer of shares in question which was done on 06.04.2006. The assessee further explained that at the time of actual transfer of shares, the share holders of the company (viz., SRIPL group) and the purchasers decided that purchaser would take over the liabilities attached to the property on their own and the vendor shareholders would transfer the company with its property and also its liabilities to the purchasers as a result of which the share value of Rs.100/- came down to Rs. (-)19397/- for which calculation was furnished before the AO. During the assessment proceedings, the AO has asked the assessee to produce the evidence/agreements in support of their contention but it was not furnished. The assessee could not file the agreements entered upon with the agents under which assessee has agreed to make the payment of commission of 2% of the gross transactions. It is also not clear that if the transfer was not taken place for a sum of Rs.43.89 crores, then from where this figure has been picked up by the commission agent in the letter. Moreover, in the letter, the commission agent has made a reference of the gross sale price of land of Rs.2,850/- sq. ft. for a gross consideration of Rs.43.89 crores. The AO has also taken a cognisance of letter written by Shri. P. Ramanand to M/s. Cushman and Wakefield India Pvt. Ltd., in which Mr. P. Ramanand has made a specific query to Mr. Austin Roach as to what would be the amount payable to these shareholders. The relevant portion of that letter is extracted hereunder in order to understand the controversy in this case:

*“what would be the amount payable to these shareholders? May be face value of the shares in order to avoid capital gains from sale of shares to our group members Rs. 2 lakhs.”*

26. Though the AO asked the assessee to explain these words mentioned in the letter of Mr. P. Ramanand addressed to M/s. Cushman and Wakefield India Pvt. Ltd., but no satisfactory reply has come. Taking into account all these aspects, the AO has concluded that transaction was undertaken for a sum of Rs.48,71,37,686/-. The CIT(A) called the remand report and the comments of the assessee on different aspects and has finally accepted the contention of the assessee that the seized document was not properly examined by the AO and the intrinsic value of the shares gone down in negative figure. The CIT(A) also observed that liabilities in the balance sheet has not been properly considered and he accordingly deleted the additions. But where the CIT(A) has come to the conclusion that AO has not considered the liabilities in the balance sheet while making additions on account of undisclosed income, the CIT(A) should have examined the balance sheet in detail in the light of the liabilities shown therein and also the fact the total sale consideration received for a transaction was of Rs.48,71,56,841/-. The contention of the Revenue that M/s. Chathur Realtors Pvt. Ltd., owns such valuable land on which building was constructed and let out to commercial establishment at a higher rent therefore there cannot be a value of shares in the negative, cannot be ignored out rightly. Therefore, we are of the view that let the entire issue be examined by the AO in the light of the seized material which appears to be valid piece of evidence against the assessee and the stand taken by the assessee that on account of liabilities, the value of shares has gone down to negative figure i.e., Rs. (-) 19397/-. Therefore, we set aside the order on this issue of CIT(A) and restore the matter to the AO to readjudicate the issue afresh in the light of seized materials and other relevant evidences. The assessee is also directed to file all relevant evidences/agreements executed in this regard.

27. The identical additions were also made in the hands of Smt. Arati Raju, Shri. Bhaskar Raju, Shri. Umesh S. Raju which were later on deleted by the CIT(A). The Revenue is in appeal before the Tribunal. Since we have already restored the matter in this regard in the case of Shri. P. Shyamaraju in foregoing paras, we set aside the order of CIT(A) in the case of Smt. Arati Raju, Shri. Bhaskar Raju, Shri. Umesh S. Raju and restore the matter to AO to readjudicate the issue in terms indicated above

28. In the result, appeals of the Revenue are allowed for statistical purposes and that of the assessee in the case of Shri. P. Shyamaraju is dismissed.

*Order pronounced in the open court on this 14<sup>th</sup> August, 2018.*

Sd/-  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

Place : Bangalore  
Dated : 14/08/2018  
/NS/\*

**Copy to :**

1	Appellant	2	Respondent
3	CIT	4	DR
5	Guard file		

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore