<u>**आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम**</u>

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री एन के चौधरी,न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं.**/I.T.A.No.241 & 242/Viz/2020**
(निर्धारण वर्ष**/Assessment Year:2015-16 & 2017-18)**

Asst.Commissioner of Income Tax Central Circle-1 Visakhapatnam	Vs.	M/s Navaratna Estates 3rd Floor, CVSV Raghu Chambers D.No.10-1-29, Sampath Vinayaka Temple Road Asilmetta Visakhapatnam **[PAN : AAJFN5785A]**
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

Cross Objection No.20 & 21/Viz/2021
(Arising out of I.T.A.No.241 & 242/Viz/2020)
(निर्धारण वर्ष**/Assessment Year:2015-16 & 2017-18)**

M/s Navaratna Estates 3rd Floor, CVSV Raghu Chambers D.No.10-1-29 Sampath Vinayaka Temple Road Asilmetta Visakhapatnam **[PAN : AAJFN5785A]**	Vs.	Asst.Commissioner of Income Tax Central Circle-1 Visakhapatnam
(अपीलार्थी/ Appellant)		**(प्रत्यर्थी/ Respondent)**

राजस्व की ओर से /Revenue by	:	Shri D.K.Sonowal, CIT(DR)
निर्धारिती की ओरसे / Assessee by	:	Shri G.V.N.Hari, AR
सुनवाई की तारीख / Date of Hearing	:	16.08.2021
घोषणा की तारीख/Date of Pronouncement	:	08.09.2021

आदेश /O R D E R

Per Bench :

These appeals are filed by the revenue against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-3, Visakhapatnam in Appeal No.302/2019-20/CIT(A)-3/VSP/2020-21 dated 07.10.2020 for the Assessment Year (A.Y.) 2015-16 and Appeal No.533/2019-20/CIT(A)-3/VSP/2020-21 dated 07.10.2020 for the Assessment Year (A.Y.) 2017-18. Cross Objections are filed by the assessee. Since the facts are identical, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.

1.1. In this case, the Revenue filed the grounds of appeal originally along with Form 36 and later revised the grounds through letter dated 20.05.2021. As per the request of the Revenue, the revised grounds of appeal are taken for adjudication :

The revised grounds raised by the department as under:

> 1. The Ld.CIT(A) erred in deleting the addition on unaccounted income from sale of Villas of Rs.3,94,47000/- by relying on the ITATs order in the assessee's case for the AY 2016-17, wherein ITAT has held that employee of the assessee Sri Lanka Anil Kumar as third party, without giving credence to the evidences found in his residence.
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> 2. The Ld.CIT(A) erred in deleting the addition on unaccounted income from sale of plots of R5.24,80,88,660/- by relying on the JTATs order in the assessee's case for the AY 2016-17, wherein ITAT failed to appreciate the fact that the then CIT(A) deleted the additions by admitting additional evidence i.e., MOU entered into with M/S Kranthi Properties, without giving opportunity to AO.

3. The Ld.CIT(A) erred in deleting the addition of Rs.8,99,900/- on account of bogus sub-contract expenses by ignoring the fact that Sri K.S.N.Murthy in his statement has admitted that cash withdrawn through bearer cheques and was handed over to M/s Navaratna Estates.

3.1. The Ld.CIT(A) also erred ignoring the direct evidence that a self cheque forRs.13,75,000/- was issued in the name of Sri Maheedhar who has an account of M/s.Navaratna Estates who has withdrawn the amount which proves beyond doubt that the sub-contract expenses were nothing but accommodation entries for withdrawing cash.

3.2. The Ld.CIT(A) further erred in ignoring the statement of admission of Sri M.Y.Subramanyam, a partner of M/s.NavaratnaEsates wherein he has admitted Rs.8,99,900/-ad additional income.

3. Any other ground of appeal that may arise at the time of hearing.

1.2. Original assessment was completed for the 2015-16 u/s 153C by an order dated 29.12.2017 and the assessee filed appeal and the matter travelled to the ITAT. The ITAT following the order of the jurisdictional High court in the case of CIT Vs.Shetty's Pharmaceuticals & Biologicals Ltd. [2015] 57 taxmann.com 282 (Andhra Pradesh) and the case of CIT-III Vs. Sri Rao Subba Rao (HUF) in ITTA No.254 of 2014 dated 15.04.2014 and other decisions discussed in the order held that the assumption of jurisdiction u/s 153C without recording the reasons is invalid, accordingly upheld the order of the Ld.CIT(A) and dismissed the appeal of the revenue. Since, the abated assessment got revived as per the provisions of section 153A of the Act, the AO completed the revived assessment on the basis of information available on record. Originally, the case was selected for limited scrutiny and later the case was converted to complete scrutiny with the approval of the Pr.CIT.

2. Identical issues are involved for the A.Y.2015-16 and 2017-18 in respect of on money on sale of villas of Blue Marino Project and sale of plots of 'Sea Pearl' project as per the details given hereunder :

	2015-16	2017-18
On money on sale of villas "Blue Marino" project	Rs.3,94,47,000/-	Rs.1,65,25,000/-
Unaccounted income from Sale of plots	Rs.24,80,88,660/-	Rs.51,94,450/-

For the sake of convenience, facts are extracted from the A.Y.2015-16.

3. Ground No.1 is related to the addition of Rs.3,94,47,000/- representing on-money received by the assessee for sale of plots & villas of Blue Marino project. The assessee has constructed 154 villas in Chepalauppada area under the project name 'Blue Marino'. The project was developed in two phases i.e. Phase I and Phase II. Each villa was allotted the land admeasuring 150 sq.yds with individual duplex home with uniform design for all villas at Chepalauppada. The assessee started selling villas in the F.Y. 2013-14. Search u/s 132 was conducted in the business premises of Lanka Anil Kumar, the marketing executive of the firm and survey u/s 133A was conducted on 24.11.2015 in the case of Navaratna

Estates at D.No.10-1-29, Sampath Vinayaka Temple Road, Visakhapatnam. Certain incriminating material was found and impounded as per order No.ACIT/Kkd/Survey/133A(3)(ia)/2015-16 dated 25.11.2015. Statement was recorded from Sri Manchukonda Yethiraja Subrahmanyam, one of the partners of the assessee firm. Statement is also recorded and subsequently on 11.12.2015 from Sri Manchukonda Yethiraja Subrahmanyam. On the basis of incriminating material found during the course of survey and the statements recorded, the AO worked out the unaccounted receipts on estimation basis at Rs.9,84,55,000/-. Search u/s 132 was conducted in the case of Lanka Anil Kumar and found certain incriminating material. The AO worked out the unaccounted receipts to the extent of Rs.3,94,47,000/- for sale of 45 villas for the Financial Year 2014-15 relating to the A.Y.2015-16 on the basis of incriminating material found from Shri Lanka Anil Kumar. The nature of material found from the premises of Lanka Anil Kumar was loose sheets containing the details villa No., Name of the customer, amount paid, amount due etc. on one side of the page (front page) and on reverse side of the page, hand written notings of Anil Kumar were made with villa no, amount paid, document value etc.. which was discussed in detail in the assessment order by the AO. As per the statement given by Shri Lanka Anil Kumar, page No.6,7 and 8 contained the details of registered sale price and on reverse side of the page contain the details of agreed price. On the basis of above material and the statement recorded from Shri Lanka Anil Kumar, the AO estimated the receipt of on money @ Rs.3,94,47,000/- on sale of villas and issued show cause notice. Mr.Suresh Kumar Jain, Managing Partner, objected for estimation of unaccounted sale price and also did not accept the statement of Shri Lanka Anil Kumar stating that the statement of Shri Lanka Anil Kumar has no relevance with the assessee's affairs. Mr.Suresh Kumar Jain, Managing Partner also stated that the statement of Shri Manchukonda Yatiraja Subrahmanyam is invalid since, he was not in good health. Shri Suresh Kumar Jain bluntly stated that the entries made in the books of accounts are correct and he does not know the entries in the loose sheets found in the residence of Shri Lanka Anil Kumar and he further stated that whatever Shri Lanka Anil Kumar has stated in the statement were not relevant to the affairs of Navratna Estates, hence submitted that the addition cannot be made on the basis of statement recorded from Lanka Anil Kumar or Shri M.Y.Subrahmanyam. However, the AO rejected the argument of the assessee and held that Rs.3,94,47,000/- worked out to be unaccounted receipts as per the material found during the course of search in the residence of Lanka Anil Kumar and accordingly made the addition.

4. Against the order of the AO the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of this Tribunal in the assessee's own case for the A.Y.2016-17. Against which the department is in appeal before this Tribunal.

5. During the appeal hearing, the Ld.DR supported the order of the AO and submitted that Lanka Anil Kumar is an employee of the firm and the material found and statement recorded from the employee is very much relevant to the assessee's case. As per the statement recorded there was an element of cash component in sale of villas which was not accounted in the books of accounts, hence, argued that the addition needs to be sustained.

6. On the other hand, the Ld.AR relied on the orders of the Ld.CIT(A) and argued that no interference is called for in the order of the Ld.CIT(A).

7. We have heard both the parties, perused the material placed on record. Identical issue has come up before this Tribunal in the assessee's own case for the A.Y. 2016-17 and after having discussed the issue in detail, the Hon'ble ITAT has deleted the addition holding that there was no material to support the order of the AO for assessment of unaccounted income. For the sake of clarity and convenience, we extract relevant para

No.17 to 17.6 in I.T.A. No. 618/Viz/2018 and 612/Viz/2018 dated 22.01.2020 for the A.Y.2017-18.

> *"17. We have heard both the parties and perused the material placed on record. The AO has taken reference to seized material found during the course of search and initially proposed to make the addition of Rs.3,66,75,000/- as per page No.25 of the assessment order relying on the following documents :*
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> *(a) Page No.54 of Annexure – A/NRE/Survey/Buss/01*
> *(b) Page No.48 of Annexure-A/NRE/Survey/Buss/01*
> *(c) Soft copy of email to Kalyan Suri on 17.02.2014*
> *(d) Soft copy of email dt.10.11.2014 to Kalyan Mannuru of Brick and Mortar*
> *(e) Reverse side of page No.50 of Annexure-BMHP/133A/Navaratna*
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> *17.1. The Ld.CIT(A) examined the above seized documents and found that none of the documents evidence the receipt of on money by the assessee. The Ld.CIT(A) in para No.6.2(v) discussed in detail with regard to facts of page Nos.48 and 54 of Annexure-A/NRE/Survey/Buss/01 and given a finding that it does not contain the details like villa number, name of the customer, date of agreement, date of payment etc. and it is a quotation for sale of villas. The assessee also explained that the price mentioned on the seized paper was a quotation to the customers which is subject to negotiations and inclusive of the stamp duty, registration fee etc.. Hence, the Ld.CIT(A)viewed that the same cannot be taken as an evidence for receipt of on money over and above the registered price.*
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> *17.2. The next document was soft copy of email addressed to Kalyan Mannuru of Brick and Mortar, wherein Lanka Anil Kumar had asked to change the price from Rs.53 lakhs to Rs.54 lakhs. The Ld.CIT(A) observed that Brick and Mortar is web based advertising agency for real estate transactions and the assessee had requested them to mention price quotation at Rs.54 lakhs which does not indicate payment of on money or receipt of on money. The documents bearing No. Annexure BMHP/133A/Navaratna does not contain any specific information regarding receipt of on money on account of sale of villas. Therefore, the Ld.CIT(A) found that on the basis of above documents it cannot be presumed that the assessee had received on money without having the corroborating evidence. The AO has considered the sale price of Rs.53 lakhs for 23 villas for the A.Y.2016-17 on the basis of page No.54 of Annexure-A/NRE/Survey/Buss/01 and issued show cause notice but did not take the same for computing the income or for arriving at unaccounted income. Different amounts were mentioned in the material found during the course of search regarding the sale price of the villas. One quotation shows 53.00 lacs and another document shows at Rs.50 lakhs and 60 lakhs. At the end the AO also did not place reliance on the above documents for arriving at the undisclosed income. During the appeal hearing also the department could not place any evidence to controvert the finding of the Ld.CIT(A). We also observe from the seized material or impounded material marked as Annexure NRE/Survey/buss/01 , BMHP/133A/Navaratna, page*

No.50 and other email correspondence that there was no indication or evidence to support the receipt of on money by the assessee. Therefore, we do not find any reason to disagree with the Ld.CIT(A). With regard to seized or impounded documents mentioned in para No.17 of this order, the Department also did not place any material to controvert the findings of Ld.CIT(A) on this issue. Further though the AO referred the above impounded or seized material and ultimately dropped the proposal and relied on page No.6 to 8 of LAK/01 found and seized from the residence of Sri Lanka Anil Kumar for assessment of undisclosed income in respect of Blue Marino Project. The AO estimated the undisclosed income at Rs.263.03 lakhs comprising of 25 villas and Rs.237 lakhs comprising of 15 villas on the basis of page No.6 to 8 of annexure LAK/01 found and seized from the residence of Sri Lanka Anil Kumar. The Ld.CIT(A) found from the seized material that there was indication of on money received in respect of plot No.122 and plot No.139. In respect of plot No.122 sale price was assessed at Rs.52.50 lakhs against the registered price of 36.25 lakhs, showing the difference amount of Rs.16.25 lakhs which was confirmed by the Ld.CIT(A) holding that there was on money receipt to the extent of Rs.16.25 lakhs. Similarly in the case of plot No.139, sale price was assessed at Rs.44.25 lakhs against the document price of Rs.36.25 lakhs. Thus there was a difference of Rs.8 lakhs which was confirmed by the Ld.CIT(A).

17.3. Mr.Yethiraja Subramanyam admitted the receipt of on money on sale of villas and admitted the undisclosed income of Rs.1.90 crores for the impugned assessment year but later on retracted from the admission. Other partner, Sri Suresh Kumar Jain did not accept the admission stating that he was not in good health. The AO also did not consider the admission given by Mr.M.Y.Subramanyam for making the addition. Mr.Subramanyam also did not give the details of on money received with details of villa No, name of the customer, sale price, the document price etc.. the assessing officer also did not make any cross enquiries to ascertain the consideration received over and above the documented price from the buyer. In the circumstances the statement and quotations referred by the AO cannot be taken at it's face value to hold that the assessee had received the on money over and above the sale price.

17.4. The assessing officer mainly placed his reliance on the document seized from Sri Lanka Anil Kumar in annexure: LAK/01 page No.6 to 8. Page No.6 reverse side shows the sale price and registered price of the villas. Front side page shows some notings and lumpsum amount against the villa No.122 and 139 which reads as under:

122 VO 52.00 16.00 paid
139 DT VT 44.25 8.25 paid

17.5. On the basis of above notings, the Ld.CIT(A) considered that there was an element of on money receipt, as recorded on page No.6 of the seized material which was found from the residence of Sri Lanka Anil Kumar marked as LAK/01. During the course of statement recorded from Sri Lanka Anil Kumar, he had stated that page No.6 to 8 related to the information of villa of buyers and major part of the amounts were collected. Sri Suresh Kumar Jain in the statement, confronted with him, completely denied having received any on money and stated that statement *given by Anil kumar has no relevance to affairs of the firm and whatever stated by Lanka Anil Kumar was wrong. The AO did not make any cross verification of the statement given by Sri Suresh Kumar Jain with Sri Lanka Anil Kumar or with any of the buyers of the villas to ascertain the receipt of on money. The above scribbling found and seized as annexure LAK/01 does not indicate any on money except giving leads to consider the total sale consideration could be Rs.52.00 lacs in case of Villa No.122 and Rs.44.25 lacs in the case of villa No.139. Since the material was found in the residence of Lanka Anil Kumar the presumption is not available to hold that contents were related to the assessee firm unless it is established by the revenue. Therefore, merely on the basis of scribbling, it cannot be presumed that the assessee had received the on money without having support of the corroborating evidence. Since the total consideration in page No.6 (reversed side) tallies with the registered document, which was registered before Sub Registrar Office and there was no other evidence to show that the assessee had received on money on sale of villas, it is unjustified to hold that the assessee had received the on money and make addition as undisclosed income on the basis of material found during the course of search from the premises of Sri Lanka Anil Kumar, who is a marketing executive and not even a partner. Section 292C of the Act presumes that the material found during the course of search belongs to the assessee in the case of the searched person. In the instant case, the searched person was Sri Lanka Anil Kumar, whereas Navaratna Estates is the assessee, a different partnership firm. Therefore, the material found during the course of search from the residence of Sri Lanka Anil Kumar cannot be attached with the assessee without having sufficient evidence. Though Sri Lanka Anil Kumar had stated that the material found during the course of search was relatable to the assessee he has not furnished the complete details with date of receipt whether it was over and above the registered price or not or whether the receipts mentioned on the reverse side of page No.6 was part of total sale consideration, registered consideration or over and above the registered sale consideration etc. In any case, the AO cannot solely depend on the material found from the residence of Sri Lanka Anil Kumar and loose sheets to make the addition of undisclosed income. In this connection we find that similar view was expressed by the coordinate bench of ITAT, Hyderabad in respect of on money payment and the jurisdictional High court on identical facts. For the sake of clarity we extract the relevant part of the orders of the Tribunal which reads as under:*

> *"18. The A.R. relied upon ITAT Hyderabad 'A' Bench decision in the case of Smt. K.V. Lakshmi Savitri Devi Vs. ACIT (2012) 148 TTJ 517, wherein the Tribunal under similar circumstances held as under:*
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>> *"Admittedly there was no search action in the case of the assessee. It is a loose slip containing certain entries recording the payment which was found at the premises of CRK. It does not contain either date of payment or name of the person who has made the payment. According to the Department, CRK denotes C. Radha Krishna Kumar and KRK denotes K. Rajani Kumari. However, no name of the assessee was found in the loose sheet. The property was purchased from w/o CRK for a disclosed consideration of Rs. 65 lakhs by the assessee. The property has been*

registered and the sale deed was executed for a consideration of Rs. 65 lakhs on 21st Aug., 2006 which consideration has been accepted by the State registration authorities. Further nothing was brought on record to show that there was any invoking of s. 50C while completing the assessment in the case of the seller. There is no evidence other than the seized material marked as 'A/CRK/104' where relevant entries are made at Rs.1,65,00,000. The seized material was not found at the premises of the assessee and there is no corroborative material to suggest that the assessee has actually paid Rs. 1.65 crores towards purchase consideration of the property. The assessee and her brother categorically denied the payment of any money over and above Rs. 65 lakhs. The AO placed his reliance on the statement of S, who is a third party. The evidence brought on record by the Department is not enough to fasten additional tax liability on the assessee. As seen from the above document this is just a handwritten loose document and the handwriting is also not of the assessee and the loose document was found at the premises of a third party. The burden is on the Department to prove conclusively that the loose document belongs to the assessee. There is no presumption in law that the assessee has actually paid Rs. 165 lakhs towards purchase of the property. The undisclosed income in this case is to be computed by the A0 on the basis of the available material on record. It should not be based on conjectures and surmises. As of now the material considered by the A0 for making the addition of Rs. 1 crore is seized material marked as A/CRK/104 and the statement of S. This loose sheet found at the premises of CRK is not enough material to sustain this addition. The seized material found during the course of search and the statement recorded is some piece of evidence to make the addition. The A0 has to establish the link between the seized material and other books of account to the assessee. The seized material and statement of CRK cannot be conclusive evidence to make this addition. The entire case herein is depending upon the rule of evidence. There is no conclusive presumption to say that actual consideration passed on between the parties is actually Rs. 165 lakhs. The assessee as well as her brother stated in their respective statements that the consideration passed between the parties is only Rs. 65 lakhs. In spite of this the AO proceeded to conclude that the seized material is conclusively reflecting the payment of consideration at Rs. 165 lakhs. The Department herein is required to establish the nexus of the seized material to the assessee. As stated earlier there is no date and name of the assessee. The allegation of the Department is that the seized material denotes the payment made by the assessee to the purchaser for purchase of the property. However, no such narration or name of the assessee was found in the seized material. The Department is not able to unearth any document or material or any corroborative material to show that the assessee herein actually paid Rs. 165 lakhs for purchase of the property. The Department has not brought on record the date on *which the payment was made and the source from which it is paid and/or any details of bank account from where the cash was withdrawn. Without any of these details, the Department has taken a view that the assessee has paid Rs.165 lakhs for purchase of the property. The Department cannot draw inference on the basis of suspicion, conjectures and surmises. Suspicion, however strong cannot take place of material in support of the finding from the A0. The A0 should act in a judicial manner, proceed with judicial spirit and come to a judicial conclusion. The A0 is required to act fairly as a reasonable person and not arbitrarily and capriciously. The assessment made should have enough material and it should stand on its own legs. The basis for addition cannot be only the loose sheet or a third party statement. In the absence of corroborative material, and/or circumstantial evidence, the addition cannot be sustained. Thus, no addition can be made on a dumb document and noting on loose sheet. It should be supported by the evidence on record and the evidence on record is not sufficient to support the Revenue's action. In a block assessment undisclosed income has to be determined on the basis of the material and evidence detected in the course of the search action. The circumstances surrounding the case are not strong enough to justify the addition made by the Department. The burden of proving the actual consideration in the purchase of property is on the Revenue. Considering the entire facts of the case, the Revenue has failed to discharge its duty, instead made up a case on surmises and conjectures which cannot be allowed. Under these circumstances, there is no reason to confirm the addition of Rs. 100 lakhs towards on-money payment. Accordingly, the addition of Rs. 100 lakhs is deleted. —CIT vs. P. V. Kalyanasundaram (2006) 203 CTR (Mad) 449: (2006) 282 ITR 259 (Mad)* ***relied on"***

19. The Hon'ble A.P. High Court in the case of Smt. K.V. Lakshmi Savitri Devi Vs. ACIT in ITTA 563 of 2011, upheld the order of the ITAT Hyderabad Bench. The Hon'ble High Court while, deciding the issue in favour of the assessee held as under:

"We are of the view that the Tribunal has rightly held that the registered document dt. 21.8.2006 under which the respondent purchased the above property showed that only Rs. 65.00 lakhs was paid to the vendor by the respondent; that there was no evidence to show that the respondent had paid Rs. 1.00 crore in cash also to the vendor; that no presumption of such payment of R..1.00 crore in cash can be drawn on the basis of an entry found in a diary/loose sheet in the premises of C. Radha Krishna Kumar which is not in the respondent's handwriting and which did not contain the name of the respondent or any date of payment or the name of the person who made the payment. It rightly held that the Revenue failed to establish the nexus of the seized material to the respondent and had drawn inferences based on suspicion, conjectures and surmises which cannot take the place of proof We

also agree with the Tribunal that the assessing officer did not conduct any independent enquiry relating to the value of the property purchased and the burden of proving the actual consideration in the purchase of the property is on the Revenue and it had failed to discharge the said burden."

20. The A.R. further relied upon the ITAT Ahmedabad 'C' Bench decision in the case of JawaharbhaiAtmaramHathiwala Vs. ITO reported in (2010) 128 TI] 36, wherein under similar set of facts, the Hon'ble ITAT decided the issue in favour of the assessee as under:

> *"The assessee has claimed to have made payment of Rs. 1,01,687/- only upto 31st March, 1999 and has consistently taken the stand that it has not paid balance amount of Rs.3,81,414/- as stated in the seized document. No evidence could be brought on record by the Revenue to show that in fact the assessee had paid the amount of Rs. 3,81,414/- to OD. No document containing signature of the assessee or handwriting of the assessee to corroborate the above making of payment by the assessee was found during the course of the search. Even at time of cross examination by the assessee the partner of OD could not produce any evidence that the amount written in the seized document was in fact received from the assessee. As the assessee has categorically denied to have made any payment in excess of Rs. 1,01,687/- upto 31st March, 1999 in respect of purchase of flat the said denial cannot be brushed aside without bringing any positive material on record. Merely recording made by a third party or statement of a third party cannot be treated as so sacrosanct so as to read as a positive material against the assessee. In view of the above the CIT(A) was not justified in confirming addition to the extent of Rs.3,81,414/- in the hands of the assessee. Therefore the addition of Rs.3,81,414/- is deleted. Asst. CIT Vs. Prabhat Oil Mills (1995) 52 TTJ (Ahd) 533* ***relied on;*** *K.P. Varghese Vs. ITO (1981) 24 CTR (SC) 358: (1981) 131 ITR 597 (SC)* ***applied"***

21. In yet another case, the ITAT Hyderabad 'B' bench in the case of DCIT (Central Circle)-6 Vs. B. Vijay Kumar in ITA No.930 & 931 of 2009 held the issue in favour of the assessee as under:

"11. We have heard rival submissions, perused the material submitted before us and also perused the orders of the revenue authorities. On a reading of the assessment order, it is absolutely clear that the addition has been made entirely on the basis of the photocopy of the sale agreement seized from the residence of the assessee in course of search and seizure operation. Undisputedly, the sale agreement is only photocopy and has not been signed by the assessee. The assessee has also raised serious allegation regarding the seizure of the impugned document and filed affidavit before DDIT (Inv.) asserting

that the said document was planted by an officer of the department also named by the assessee in the affidavit. However, such allegation of the assessee has not at all been enquired into and has been met with complete silence by the department. From the materials on record, it is very clear that the AO has failed to lay his hands on any credible evidence to establish the fact that the assessee has purchased the property for a consideration of Rs.1,68,00,000/- as mentioned in the photo copy of sale agreement seized in course of search and seizure operation. The assessee has produced before the AO registered sale deeds in support of its claim that they had purchased the property for a consideration of Rs. 23.50 lakhs. When the AO alleges that the assessee has paid more than what has been declared in the registered sale deed because the fair market value of the asset as on the date of transaction exceeds full value of consideration declared by the assessee then it is for the AO to prove that the value declared by the assessee is understated. In the appeal before us, excepting the photo copy of sale agreement, there is no other evidence on record found as a result of search or brought on record on the basis of enquiry conducted by the AO which could establish the fact that the actual consideration passed between the parties is not as mentioned in the registered sale deed but as per the sale agreement found during search operation. It is also an interesting fact to note that in the statement recorded from the assessee u/s 132(4) the revenue authorities have not put any question with regard to the sale agreement seized at the time of search and seizure operations. Smt. P. Nalini Devi also in her statement further clearly stated that the property was sold at Rs.23.50 lakhs and not at the rate of Rs.1.68 crores. The Hon 'ble Supreme Court in the case of K.P. Verghese reported in 131 ITR 597 has held that onus is on the department to prove that the assessee has understated the value of the property and has paid more than what is mentioned in the registered sale deed. The Hon'ble Supreme Court in the case of Moosa S. Madha and Azam S. Madha vs. CIT(89 ITR 65) has held that photo copies have little evidentiary value. Therefore, photocopies of any document cannot by itself be considered as evidence for purpose of making addition in assessment proceedings. The AO is required to bring further evidence on record to show that the sale agreement was actually acted upon by the parties. This is because of the fact when the AO is going to make an addition, there should be sufficient evidence brought on record to support such addition. No addition can be made on conjectures and surmises. As seen from the assessment order, the AO has adopted value of the property at the Rs.7000/- per sq. yard on the date of transaction. For adopting such a valuation, the AO has not conducted any enquiry or brought any materials on record to show that the value of the property on the date of transaction was actually Ps. 7000 per sq. yard. On the other hand, the assessee has demonstrated with supporting evidence that the value of the land on the date of transaction was the rate mentioned in the registered sale deed and for which the property was *sold. The assessee has also produced sufficient evidence to show that there was dispute going on regarding the legal right over the property which also had an effect on the fair market value of the property. It is also pertinent to mention here that the assessee had filed his return f income for the assessment years under dispute much prior to the date of search declaring the purchase of land in question at the consideration mentioned in the registered sale deeds, so far as the AO's observations on the loose sheets recovered from the residence of Smt. Nailni Devi are concerned, the CIT (A) after duly examining them has given a conclusive finding that the assessee's name has no where been mentioned in those documents nor the amount of Rs.109.48 lakhs represents the expenditure incurred by Smt Nalini Devi. However, the amount was found to be the summary of the balance of various accounts operated by the family members of Smt. Nalini Devi. We find that the CIT (A) in his elaborate and well reasoned order has dealt with all these aspects and came to a finding on fact that the AO has made the addition purely on conjectures and surmises and not on the basis of any material or evidence brought on record. On examining the facts and materials before us, we are of the view that the finding arrived by the CIT (A) is just and proper and in accordance with the principles of law laid down by the Hon'ble Supreme Court and Hon'ble High Courts which are cited before him. We therefore find no necessity to interfere with the finding of the CIT (A) on this issue. Hence the grounds raised by the revenue for the years under consideration are dismissed."*

22. The Hon'ble A.P. High Court in ITA No.232 of 2013 in the case of CIT Vs. Smt. R. Nalini Devi has upheld the order of the ITAT Hyderabad Bench. The Hon'ble High Court while, considering the issue held as under:

> *"We have heard the learned counsel for the appellant and gone through the impugned judgement and order of the learned Tribunal. It appears, the Assessing Officer had relied on a photocopy of an unsigned sale agreement in order to find that consideration amount has been paid at Rs. 1,68,00,000/-. Therefore, this amount was not disclosed. The learned Tribunal has correctly concluded that unsigned photocopy of the agreement for purchase of the property cannot be a material to rely on, when the registered sale deed has been produced and the same shows that the property was purchased at a price of Rs.23,50,000/-. This registered sale deed was disclosed at the time of original assessment. According to us, the agreement of sale loses its force, the moment registered sale deed is executed. If the property has been purchased at a higher price than that of mentioned in the purchase deed, then the onus is on the Assessing Officer to establish that as has been rightly concluded by the Tribunal on this issue. Moreover, photocopy of the unsigned agreement has got no evidentiary value. The Assessing Officer has done a guess work while coming to the conclusion that the price of the property is more than mentioned in the sale deed. There must be some material and basis to conclude that the purchase has been made at an*

under valuation."

23. *The Hon'ble Supreme Court in the case of CIT Vs. P.V. Kalyana Sundaram (2007) 294 ITR 49, under the similar circumstances held in favour of the assessee. The Hon'ble Supreme Court, while deciding the issue in favour of the assessee held as under:*

> *"We have heard learned counsel for the parties and have gone through the record. It is true that the Division Bench of the High Court has borrowed extensively from the orders of the Tribunal and the Commissioner and passed them off as if they were themselves the author(s). We feel that quoting from an order of some authority particularly a specialized one cannot per se be faulted as this procedure can often help in making for brevity and precision, but we agree with Mr. Vahanvati to the extent that any "borrowed words" used in a judgement must be acknowledged as such in any appropriate manner as a courtesy to the true author(s). Be that as it may, we are of the opinion that the three questions reproduced above can, in no way, be called substantial questions of law. The fact as to the actual sale price of the property, the implication of the contradictory statements made by Rajarathinam or whether reliance could be placed on the loose sheets recovered in the course of the raid are all question of fact. We therefore find no infirmity in the order of the High Court. Accordingly, we dismiss the appeal."*

24. Considering the total facts and circumstances of the case and also applying the ratios of the judgements cited above, we are of the opinion that the A.O. is not correct in coming to the conclusion that the on money is exchanged between the parties based on a loose sheet found in the premises of a third person and also admission by a third person. To sustain the addition, the A.O. should have conducted an independent enquiry about the value of the property and ascertain whether any under valuation is done, if so what is the correct value of the property. Further, the A.O. did not brought on record any evidence to support his contention to say that there is on money exchanged between the parties. In the absence of proper enquiry and sufficient evidences, we find no reason to confirm the addition made by the A.O. Therefore, we reverse the CIT(A) order and direct the Assessing Officer to delete the addition."

17.6. Though the above decisions are rendered in respect of on money payment, the same findings and observations are equally applicable for on money receipts also. In 15 villas, which were neither sold nor registered, there is no case for addition of undisclosed income, hence the same required to be deleted. In the remaining 25 villas there is no evidence brought on record to show that the assessee has received on money except the scribbling paper seized or impounded at the time of survey or the loose sheets seized from third party, Sri Lanka Anil Kumar. The scribbling also *does not indicate the on money receipt with date and name of the party. No other evidence was brought on record by the revenue to establish that the assessee had received on money for sale of villas. Therefore, we hold that there is no case for assessment of unaccounted income on account of on money receipt on sale of villas. Hence, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. In the result, appeal of the revenue is dismissed on this ground."*

Since the issue is identical and there is no change in the facts, respectfully following the view taken by the coordinate bench of ITAT in the assessee's own case, we hold that there is no case for assessment of unaccounted income on account of on money received on sale of villas. Accordingly, we, uphold the order of the Ld.CIT(A) and delete the addition made by the AO. Revenue's appeals on this ground for the A.Y.2015-16 and A.Y.2017-18 are dismissed.

8. Ground No.2 is related to the addition of Rs.24,80,88,660/-. The AO made the addition of Rs.24,80,88,660/- towards on-money on sale of plots. The assessee sold 4 plots bearing No.61 to 64 @13,000/- per sq.yard. The AO on the basis of the sale price of plot No.61 to 64 which are adjacent project 'Sea Pearl' estimated the sale price @13,000/-per square yard of each plot in 'Sea Pearl' as against the registered sale deed document price of Rs.4,000/- per sq.yd and arrived at the total unaccounted receipts of Rs.25,45,44,808/- after reducing the unaccounted income of F.Y.2015-16 and assessed the sum of Rs.24,80,88,660/- to the year under consideration.

For the A.Y.2017-18, the AO made the addition of Rs.51,94,450/- on identical facts.

9. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the order of this Tribunal for the A.Y.2016-17.

10. Against which the revenue is in appeal before this Tribunal. During the appeal hearing, the Ld.DR vehemently supported the order of the AO and argued that the Ld.CIT(A) deleted the addition admitting the additional evidence i.e. agreement with 'Kranthi Properties' without giving opportunity to the assessee. Therefore, requested to set aside the order of the CIT(A) and remit the matter back to the file of the Ld.CIT(A).

11. Per contra, the Ld.AR relied on the order of this Tribunal and argued that in the revived assessment the department did not bring any fresh facts therefore argued that no interference is called for in the order of the Ld.CIT(A).

12. We have heard both the parties and perused the material placed on record .For the A.Y.2016-17, on identical issue, the Tribunal has deleted the addition. For the sake of clarity and convenience, we extract relevant part of the order of this Tribunal for the A.Y.2016-17 which reads as under :

"20. We have heard both the parties and perused the material placed on record. In the instant case, there was no evidence found during the course of search/survey with regard to receipt of on money in respect of project Sea Pearl. The AO made the addition on the basis of sale price of plots to 61 to 64 which were adjacent to Sea Pearl Project and has no connection with the project Sea Pearl. The plot No.61 to 64 and the Sea Pearl projects were completely different and not inter linked. As explained by the assessee, it has sold the bulk of plots to M/s Kranthi Properties @4000/- per sq.yd and any amount received over and above the agreed rate would accrue to Kranthi Properties, but not to the assessee. The assessee placed copy of MoU reached between the assessee and the Kranthi Properties in page No.190 to 192 of the paper book. No other evidence was brought on record by the department to controvert the finding of the Ld.CIT(A) or to controvert the contents of MoU between the assessee and the Kranthi properties dated 25.07.2013. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue is dismissed and the cross objections filed by the assessee becomes infructuos on this issue, hence dismissed."

Though the Ld.DR argued that the Ld.CIT(A) deleted the addition admitting the additional evidence of MOU with M/s Kranthi Properties, for the A.Y. 2016-17 without giving opportunity to the AO, the said MoU was very much available with the AO at the time of completing the present abated assessment, which was completed after the Ld.CIT(A)'s order. Inspite of the fact that the Ld.CIT(A) deleted the addition basing on the MoU entered into with M/s Kranthi Properties, the AO did not bring any new facts or issue in the present assessment proceedings also controverting the recitals of MoU. No examination was made with Kranthi properties or the buyers of the flats. Therefore, argument of the Ld.DR is unacceptable and hence, rejected. Since facts are identical and no change in the facts we find no reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Appeals of the revenue for the A.Y.2015-16 and 2017-18 are dismissed.

13. Ground No.3 to 3.2 are related to the bogus contract payment stated to be made to Mr.KSN Murthy. In the assessment order, the AO made the addition of Rs.8,99,900/- relating to the payments made to Shri K.S.N.Murthy for executing sub contract works. Survey u/s 133A was conducted in the case of M/s Dinakar Sai Constructions on 30.11.2015 and during the course of survey, statement was recorded from Sri KSN Murty, who has stated that the amounts were paid into his bank account in Kotak Mahindra Bank by way of cheques and later withdrawn by self cheques by Maheedhar who is the accountant of M/s Navaratna Estates. However the cheques were issued by Shri K.S.N.Murthy and the account was being operated by him. The AO confronted the statement recorded from Sri KSN Murthy with M.Y.Subrahmanyam, partner of the firm, who has rejected the contentions of Sri KSN Murthy, however, agreed to offer the same as unaccounted income. In the assessment proceedings, the AO issued show cause notice to the assessee and the assessee in response to the show cause notice denied the statement of Sri K.S.N.Murty and confirmed that the payments were made to Sri K.S.N.Murty for incurring expenditure and it was not received back by the assessee. However, the AO placing reliance on the statement of Sri K.S.N.Murty refused the submission of the assessee and made the addition as bogus expenditure in the hands of the assessee.

14. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition, holding that the AO has not properly appreciated the submission made by the assessee on the evidences filed before the AO.

15. Against which the department is in appeal before this Tribunal. During the appeal hearing, the Ld.DR supported the order of the AO, whereas, the Ld.AR relied on the order of the Ld.CIT(A) and argued that the amount paid to Sri K.S.N.Murty was genuine expenditure incurred for the sub contract works and it was never received back by the assessee. The self withdrawals made by Sri K.S.N.Murty were for their own purpose and it was not received back by the assessee. In addition to the above, the assessee submitted that Sri M.Y.Subrahmanyam has retracted the statement. There was no evidence found during the course of survey or search with regard to receipt of money back from Sri K.S.N.Murty. Further, the Ld.AR argued that the assessee has requested for cross examination of Sri K.S.N.Murty which was not afforded by the AO inspite of specific request made. Therefore, argued that there is no case for making the addition and the Ld.CIT(A) has rightly deleted the addition and hence, no interference is called for.

16. We have heard both the parties and perused the material placed on record. In the instant case, the sums were credited in the bank account for the purpose of executing the sub contract works. It is also fact that Dinakar Sai Constructions is executing the sub-contract works and Sri KSN Murty is a managing partner of Dinakar Sai Constructions. Though the AO made an effort to establish that the assessee firm made the payments to Dinakar Sai Constructions and received the amounts back by way of self cheques, the AO, failed to collect the information regarding the exact sub contract works carried on by Dinakar Sai Constructions and the expenditure incurred for such civil contracts. The AO also did not bring any material to show that the expenditure was claimed twice through sub contract works and by the assessee themselves debiting the expenditure separately to the P&L account. There was no evidence found by the AO, except the statement recorded u/s 131 of the Act, inspite of conducting the survey in the business premises of Sri Dinakar Sai Constructions. The AO also did not allow cross examination inspite of specific request made by the assessee. In the absence of any positive evidence to show that the expenditure was not incurred or debited twice, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue is dismissed.

17. For the A.Y.2015-16, the assessee filed cross objections supporting the order of the Ld.CIT(A).

18. Ground No.2, 3, 4 are related to the additions made by the AO and deleted by the Ld.CIT(A).The assessee filed cross objections supporting the order of the Ld.CIT(A). Since the grounds are decided on merits in the revenue's appeal against the revenue, ground No. 2,3 and 4 becomes infructuous, hence dismissed.

19. Ground No.5 is general objection which does not need separate adjudication, hence dismissed.

20. Ground No.1 is related to validity of assessment made u/s 143(3),in the light of cancelling the original assessment by ITAT, quashing the notice issued u/s 153C for the assessment year under consideration. The assessee challenged the revival of abated assessment as the department has filed the appeal against the order of the ITAT before the Hon'ble High Court of Andhra Pradesh. Since the revenue's appeal is dismissed on merits, we consider it is not necessary to adjudicate the ground raised by the assessee. However, the assessee is given the liberty to take up the issue after the order of the Hon'ble High Court of Andhra Pradesh.

21. For the A.Y..2017-18, the assessee filed cross objections supporting the order of the Ld.CIT(A). Since the revenue's appeal is dismissed, cross objections are also dismissed.

22. In the result, appeals of the revenue as well as the cross objections of the assessee are dismissed.

Order pronounced in the open court on 8th September, 2021.

Sd/-	Sd/-
(एन के चौधरी)	**(डि.एस .सुन्दर सिंह)**
(N.K.CHOUDHRY)	**(D.S.SUNDER SINGH)**
न्यायिक सदस्य/ JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

Dated : 08 .09.2021
L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-1, Kakinada
2. निर्धारिती/ The Assessee - M/s Navaratna Estates, 3rd Floor, CVSV Raghu Chambers, D.No.10-1-29, Sampath Vinayaka Temple Road, Asilmetta, Visakhapatnam
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam