IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

	I.T.A. Nos. 336/DEL/2012 AND 5515/DEL/2013	
	A.Y. : 2009-10	
SAMTA KHINDA 2, GOLDEN GATE, WESTEND GREEN, RAJOKARI, NEW DELHI – 110 038 (PAN: ABCPS2929M)	VS.	ACIT, CENTRAL CIRCLE-22, NEW DELHI
(APPELLANT)		**(RESPONDENT)**

Assessee by : Sh. Anil Kumar Gupta, CA
Department by : Sh. I.P.S. Bindra, CIT(DR)

ORDER

PER H.S. SIDHU : JM

The Assessee has filed 02 appeals against the separate impugned Orders of Ld. CIT(A)-III, New Delhi pertaining to assessment year 2009-10 one is relating to quantum proceedings and another is relating to penalty proceedings. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience

2. The grounds raised in Assessee's ITA No. 336/Del/2012 (AY 2009-10) read as under:-

1) The Learned CIT (Appeals) has grossly erred in law and on the facts of the case in confirming the addition of Rs. 96 lacs (Ninty Six lacs) in the hands of the assessee as Unaccounted income from- sources in terms of Sec 69/698/69C of the Income Tax Act.

2) The Learned CIT (Appeals) has grossly erred in law and on the facts of the case in appreciating that there is no corroborating evidence of the figure of Rs 96 lacs

mention d on the loose paper.

3) The Lea ed CIT (Appeals) has grossly erred in law and on the facts of the case in applying Sec. 292C of the Income Tax Act merely because some papers were found from the premises of the assessee while ignoring vital facts and contentions of the assessee.

4. The Ld. CIT (Appeals) has grossly erred in law and on the facts of the case in confirming the addition of Rs 5.671acs (Five lacs Sixty Seven thousand) in the hands of the assessee as unexplained jewelle:y u/s 698 of the Income Tax Act.

5) The appellant craves leave to add, alter, demand, supplement or raise fresh grounds of appeal, if considered expedient and advisable at the time of hearing of appeal.

It is prayed that the appellant appeal be allowed.

3. The grounds raised in Assessee's ITA No. 5515/Del/2013 (AY 2009-10)

1) That the Ld. CIT(A) grossly erred in law and facts of the case in confirming the penalty of Rs. 10,16,700/- (Rupees Ten Lacs Sixteen Thousand Seven Hundred) under section 271AAA of the

Income Tax Act, 1961 without appreciating facts of the case. There was no undisclosed income of the assessee during the previous year and the addition had been made arbitrarily on the basis of a computer printout.

2) The appellant craves leave to add, alter, demand, supplement or raise fresh ground of appeal, if considered expedient and advisable at the time of hearing of appeal.

It is prayed that the appellant appeal be allowed.

ITA NO. 336/DEL/2012 (2009-10) – SAMTA KHINDA VS. ACIT

4. The brief facts of the case are that the original return of income was filed u/s 139 of the Income Tax Act, 1961 on 27.3.2010 at a total income of Rs. 4,27,00,340/-. Search and seizure u/s. 132 of the I.T. Act was carried out at the business and residential premises of Nimitaya and Khinda group during which the residential premises of Sh. Sandeep Singh Khinda and his wife Ms. Samta Khinda were also searched on 6.11.2008 wherein certain documents were found and seized. In response to the notice issued under section 143(2) and 142(1) of the I.T. Act, 1961 alongwith detailed questionnaire issued on 12.8.2010 the assessee's AR attended the proceedings and filed the submissions from time to time as called for. Thereafter, the AO assessed the income of the assessee at Rs. 6,06,09,770/- u/s. 143(3) of the I.T. Act, 1961 by making the various additions vide his order dated 31.12.2010.

5. Aggrieved by the aforesaid order of the Assessing Officer dated 31.12.2010, assessee filed an appeal before the Ld. First Appellate Authority, who vide impugned Order dated 28.11.2011 has partly allowed the appeal of the Assessee and confirmed the addition 96 lacs on account of unaccounted income from undisclosed sources in terms of Section 69/69B/69C of the I.T. Act, 1961 and Rs. 5.67 lacs as unexplained jewellery u/s. 69B of the I.T. Act, 1961.

6. Aggrieved with the impugned order of the Ld. CIT(A), Assessee is in appeal before the Tribunal.

7. At the time of hearing Ld. Counsel of the assessee stated that Ld. CIT(A) was erred in confirming the addition of Rs. 96 lacs in the hands of the assessee of the assessee as Unaccounted income from sources in terms of Sec 69/698/69C of the Income Tax Act. He further stated that there is no corroborating evidence of the figure of Rs 96 lacs mentioned on the loose paper. He further stated that Ld. CIT (Appeals) has also erred in applying Sec. 292C of the Income Tax Act, 1961 merely because some papers were found from the premises of the assessee while ignoring vital facts and contentions of the assessee. It was the further contention of the ld. Counsel of the assessee that the addition of Rs 5.671acs in the hands of the assessee as unexplained jewellery u/s 698 of the Income Tax Act. In support of his above said contentions, he stated that the case of the assessee is squarely covered by the various decisions of the Hon'ble High Court of Delhi and the Coordinate Benches of the ITAT and accordingly he relied upon the following decisions:-

- Vatika Landbase Pvt. Ltd. – 383 IT 320 (ITA No. 670/2014 dated 26.2.2016)- Delhi High Court.
- M/s Delco India Pvt. Ltd. (ITA No. 116/2016) dated 10.2.2016 – Delhi High Court.

- P. Koteshwara Rao order dated 12.8.2016 of the ITAT, Visakhapatnam (ITA No. 251 & 252Vizag/2012 (Ayrs. 2007-08 & 2008-09)
- K.V Lakshmi Savitri Devi vs. ACIT (2012) 148 TTJ 157, ITAT Hyderabad Benches.
- Hon'ble A.P. High Court in the case of K Lakshmi Savitri Devi (Supra) in ITA No. 563 of 2011 has upheld the order of the Tribunal.
- CBI vs. VC Shukla (1998) 3 SCC 410)
- CIT vs. PV Kalyansundaram (294 ITR 49)
- CIT vs. Girish Chaudhary (2008) 296 ITR 619 (Delhi) – Delhi High Court.
- ACIT vs. Sharad Chaudhary (2014) 165 TTJ 0145) (Delhi)
- Sunita Dhadda vs. DCIT (2012) 71 DTR 0033 Jaipur

7.1 On the other hand, Ld. CIT(DR) relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference and the same may be upheld.

8. We have heard both the parties and perused the records, especially the Orders of the revenue authorities and the case laws cited by the Ld. Counsel of the assessee. In this case search u/s. 132 of the Act was conducted at the premises of the assessee at 2, Golden Gate, Westend Greens, Rajokari, New Delhi- 110 038 on 6.11.1008. During the course of search a computer printout page 5 of Annexure I was found and seized from the residential premises of the assessee. The seized paper has been shown is a part of the assessment order. On perusal of the same the AO held that RS. 96 lacs

has been given by Samta Singh to Sudhiksha Singh in cash which has not been recorded in the books of the assessee. the AO has made an addition of Rs. 96 lacs in the hands of the assessee on the basis of the document seized from the premises of the assessee. We find that the seized document does not have any signature of the assessee. However, it is a computer print which has not been used / maintained / operated by the assessee. On perusing the said seized document, it is clear that certain nothings have been made which cannot be said to be the actual transaction. This is only an unsigned /undated loose paper with the Department to substantiate its stand. No cheque transaction has taken place between the Sudhiksha Singh and the Assessee during the financial year 2008-09. The addition has been made merely on the basis of this loose paper without any corroborating evidence and on conjecture and surmises. Therefore, the presumption u/s. 292C of the Act is a rebuttable presumption. The presumption as envisaged in section 292C is limited to the correctness of the documents found at the time of search or survey, but that presumption has not been extended by the statute to be presumed to be the income of the assessee. In view of the aforesaid discussions, we find considerable cogency in the assessee's counsel submissions that the issue in dispute is squarely covered by the following decisions:-

8.1 In the case of Vatika Landbase Pvt. Ltd. – 383 IT 320 (ITA No. 670/2014 dated 26.2.2016)- Delhi High Court has adjudicated as under:-

> In the present appeal, the Revenue urged the following questions:
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> "1. Whether on the facts a d circumstances of the case, the Income Tax Appellate Tribunal was correct in Law in deleting the addition of Rs. 25,40,36,454 out of the total addition of Rs. 31,01,09,834 made by the

AO on account of undisclosed receipt (from sale of space flats in Vatika Triangle?

2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting of Rs. 11.49,55,096 (i.e. Rs. 11,34,05,096 plus Rs. 15.50,000) out of the total addition of Rs. 13,84,20.000 made by the AD on account of undisclosed income not declared by the Assessee in its books of account?

3. Whether on the (acts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting the addition of Rs. 1,04,39,000 made by the AO on account of accommodation entries taken by the Assessee?

4. Whether on the facts and circumstances of the case, the order of the ITAT is not perverse as it has failed to consider that in this case, the AO made the addition on the basis of the relevant searched material gathered from the Assessee during the course of the search proceedings?"

29. However, by an order dated 20th May 2015 the only question that was framed for consideration by the ITAT was as under: "Did the ITAT fall into error in holding that the addition of Rs. 5,60,73,380 was unsustainable in law in the circumstances 0 the case?"

30. Consequently, as the present appeal by the Revenue was concerned, its scope is confined to the question framed viz., the sustain ability of the deletion by the ITAT of the additions made by the AO as sustained by

the CIT(A) of Rs. 5,60,73,380/- pertaining to the sale of flats on the second and third floor of VT.

40. Turning to the case on hand, the document recovered from the file in the computer of Mr. Awasthi, forms the basis of the addition made by the AO, which was further reduced by the CIT (A). This was in the form of a computer print out of three sheets which were unsigned and undated. The first sheet was titled 'Cash- in-flow detail for the revenue', the next was titled 'Revenue details' and the third was titled 'Vatika Triangle, Guargaon.' The notes to the documents are indicative of their being projections. Noting (i) states that "it is presumed that the building will be completed and fully let out in the month of November 2002." Another note states "Further, the sale of the building will took place over a period of nine months." Admittedly, as on the date of the search the construction was still in progress. Flats up to the fourth floor had been sold. The view taken by the ITAT that mere fact that the print out states that the flats on second and third floor have been sold, does not necessarily mean that they were sold at the rates indicated therein is definitely a plausible view to take.

41. Considering that the document was recovered from the computer of Mr. Sunil Awasthi, he ought to have been summoned to explain the rates of sale shown therein for the flats on different floors. In fact, the Assessee did make a request for his cross-examination. The other possibility was to examine the purchasers of the flats as they would have

confirmed the price paid by them and how much of it was in cheque and what extent in cash. However, that too was not done.

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43. The Revenue has not been able to counter the submission of the Assessee that there are anomalies in the figures mentioned in Sheet Nos. 3 and 4 of the said document.

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45. As pointed out in Commissioner o{Income Tax v. S.M Aggarwal (supra) the said document can at best be termed as a 'dumb' document which in the absence o{independent corroboration could not possibly have been relied upon as a substantive piece of evidence to determine the actual rates at which the flats were sold. Further as pointed out in Commissioner of Income Tax v. D.K. Gupta (supra) merely because there are notings of figures on slips of paper, it did not mean that those transactions actually took place. Likewise in Commissioner of Income Girish Chaudhary (supra), the Court termed a loose sheet containing some notings of figures as a 'dumb document' since there was no material to show as to on what basis the AO had reached a conclusion that the figure '48' occurring in one of them was to be read as Rs. 48 lakhs.

46. In the present case, there was again no material on the basis of which the AO could have applied a standard rate of Rs 4,800 per sq ft for all the floors of VT. It was also not open to the AO to draw an inference on

the basis of the projection in the document, particularly when the Assessee offered a plausible explanation for the document. The burden shifted to the Revenue to show, on the basis of some reliable and tangible material, how rate at which the flats on the second and third floors of VT was higher than that dictated in the sales register or the sale deeds themselves.

47. In the circumstances, the Court is of the view that the ITAT was justified in coming to the conclusion that the addition of Rs. 5,60,73,380 made by the CIT (A) was not sustainable in law.

48. For the aforementioned reasons, the question framed by the Court is answered in the negative, i.e., in favour of the Assessee and against the Revenue.

8.2 In the case of M/s Delco India Pvt. Ltd. (ITA No. 116/2016) dated 10.2.2016 – Delhi High Court has held as under:-

Section 292C of the Act, inter alia, provides that where any books of accounts or other documents are found in possession or control of any person in the course of search under Section 132 or survey under Section 133A of the Act, it may be presumed that such books or documents belong to such person. Undisputedly, such presumption is rebuttable. It is not disputed that the Assessee had clearly denied having any dealing with M/s Smridhi Sponge Limited and had also filed an affidavit to that effect. The ITAT found, as a matter of fact, that the Assessee on its part had made the necessary enquiries and also provided

final accounts of M/s Smridhi Sponge Limited; confirmation from the Director of M/s Smridhi Sponge Limited; details of the bank accounts; final accounts; Director" s Report; PAN Number etc. which sufficiently discharged the burden cast on the Assessee. The ITAT also found that the Assessee had provided the necessary information for the AO to make the requisite enquiries from M/s Smridhi Limited as well as M/s Galax Ex orts Pvt. Ltd. In our view no interference with the order of the ITAT is called for under Section 260A of the Act since the findings of the ITAT are essentially factual. Further, we find no infirmity with the findings returned by the ITAT and in any event the same cannot be held to be perverse by any stretch.

8.3 In the case of P. Koteshwara Rao order dated 12.8.2016 of the ITAT, Visakhapatnam (ITA No. 251 & 252Vizag/2012 (Ayrs. 2007-08 & 2008-09), the ITAT has observed as under:-

11. The only issue that came up for our consideration is whether on facts and circumstances of the case, the seized documents indicate exchange of on money between the parties. Admittedly, in the assessee's case there was no search. The seized document found during the course of search in the premises of M/s. M.V.V. Builders, is a loose sheet wherein certain financial transactions were recorded in the name of the assessee. Though, Sri M.V.V. Satyanarayana stated that he had paid a sum ofRs.50 lakhs and Rs.25 lakhs in the financial year relevant to assessment year 2007-08 & 2008-09, to Sri P. Koteswara Rao towards land dispute settlement, nowhere it is stated that he had paid on money

to the assessee towards purchase of site. The assessee right from the beginning stated that he had not received any on money from M/s. M.V.V. Builders towards sale of site. Besides, loose sheets found in the premises of M/s. M.V.V. Builders, the A.O. does not have any other document to show that the assessee has received on money from the purchaser. The A.O. has not made out any attempt to find out some reliable cogent material evidence on record to support his findings or to corroborate the statement of the purchaser. The assessee denied having received any on money over and above what was stated in the sale deed. The assessee rightly claimed that the sale transaction has been completed on 7.6.2006. The sale transaction has been completed by way of registered sale agreement-cum-GPA. The assessee has received full consideration as on the date of registration of document and handed over the possession of the property to the buyers. The allegation of the A.O. is that the purchaser has paid on money to the assessee in the financial years relevant to assessment year 2007-08 and 2008-09 which is almost one year after sale is completed. We further noticed that total consideration has been paid through proper banking channel. It was not a case of A.O. that the value shown in the sale deed is not real value of the property, because the value declared in the sale deed is the market value of the property, fixed by the state government authorities for determining stamp duty purpose. Further, there is no evidence with the A.O. to show that there is a under valuation of property and provisions

of section SOC of the Act is invoked while completing the assessment. The A.O. merely acted upon the statement given by the third party which was totally denied by the assessee. It is a settled position of law that unless statement is tested under cross examination, the same cannot be considered as evidence against the assessee. The A.O. used the admission of partners of purchaser firm made u/s 13 (4) of the Act in their case against the assessee, but failed to note that admission of other parties cannot be considered as conclusive evidence against the assessee, unless there is a corroborative evidence on record, because the maker of statement can bind himself, but how he bind others from his statement without there being any further evidence on record.

12. In the present case on hand. except loose sheet found in the premises of M/s. M V V Builders and admission made by the third party in their assessment proceedings. There is no other evidence on record to prove that on money is paid to the assessee towards purchase of site. We further noticed that Sri M V V Satyanarayana. while deposing before the investigating officer has stated that he has paid money to Sri P. Koteswara Rao towards settlement of land disputes. But nowhere stated that he had paid on money to the assessee towards purchase of Venkojipalem site. The AO without bringing on record an evidence to prove that on money is exchanged between the parties.

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merely harping upon loose sheet and third party statement, which cannot be considered as conclusive evidence against the assessee to bring on money to tax as undisclosed income. The A.O. is required to bring further evidence on record to show that actual money is exchanged between the parties, but literally failed to do so. The AO did not conduct any independent enquiry relating to value of the property, instead merely relied upon statement given by the purchase of the property which is not covered. Further, there is no evidence with the A.O. that money has been exchanged between purchaser and seller. Therefore, we are of the view that the A. 0. is not correct in making additions towards on money without there being any evidence to show that the assessee has received anv money over and above what was stated in the sale deed.

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17. Considering the facts and circumstances of this case and also applying the ratios of the judgements cited above, we are of the view that the A.O. is not correct in coming to the conclusion that on money exchanged between the parties based on a loose sheet found in the premises of a third party and also statement given by a third person. To sustain the addition, the A.O. should have taken 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. failed to bring any evidence to support his findings that there is on-money payment over and above what is stated in the sale deed. In the

absence of proper enquiry and sufficient evidences, we find no reasons to confirm the additions made by the A.O. The CIT(A) without appreciating facts, simply upheld additions made by the A.O. Hence, we set aside the order passed by the CIT(A) and direct the A.O. to delete the additions made towards alleged on money for the assessment years 2007-08 & 2008-09.

18. In the result, the appeal filed by the assessee in ITA Nos. 251 &252IVizag/2012 are allowed.

8.4 In the case of K.V Lakshmi Savitri Devi vs. ACIT (2012) 148 TTJ 157, ITAT Hyderabad Benches has held as under:-

"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 louse sheet. The property was purchased from P w/c CRK for a disclosed consideration of Ps. 65 lakhs bv the assessee. The property has been registered and the sale deed was executed for a consideration of Ps. 651akhs 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/CRK104' 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 reliance on the statement of 5, 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 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. 1651akhs towards purchase of the property. The undisclosed income in this case is to be computed by the AO 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 AO for making the addition of Rs. 1 crore is seized material marked a 'A/CRK104' and the statement of 5. 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 are some piece of evidence to make the addition. The AD 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. 165lakhs. The assessee as well as her brother stated in their respective statements that the consideration passed between the parties is only Rs. 65lakhs. In spite of this the AO proceeded to conclude that the seized material is conclusively reflecting the payment of consideration at Rs. 165lakhs. 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 Ps. 1651akhs 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 ii 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 Ps. 1651akhs 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 AO. The AO

should act in a judicial manner, proceed with judicial spirit and come to a judicial conclusion. The AO 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 the 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 or 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) 282ITR 259 (Mad) relied on".

8.4.1 The Hon'ble A.P. High Court in the case of K Lakshmi Savitri Devi (Supra) in ITA No. 563 of 2011 has upheld the order of the Tribunal.

"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.l. 00 crore in cash also to the vendor; that no presumption of such payment of Rs.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 respondents 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.

8.5 In the case of CBI vs. VC Shukla (1998) 3 SCC 410) it has been held that the loose sheets of paper cannot be considered to be books.

8.6 In the case of CIT vs. PV Kalyansundaram (294 ITR 49) it has been observed as under:-

"Notings on the loose pieces o{paper on the basis of which the initial suspicion with regard to the under valuation had been raised were vague

and could not be relied upon as it appeared that the total area with respect to the sale deed and that reflected in the loose sheet was discrepant. It was also observed that as per the guidelines for registration the fair value for registration on the relevant date was Rs.244 to Rs.400 per Sq. ft. and the sale consideration for Rs.850/- per sq. ft. claimed by the Revenue was unrealistic and ignored the ground situation.

8.7 In the case of CIT vs. Girish Chaudhary (2008) 296 ITR 619 (Delhi) – Delhi High Court has held as under:-

> "That the revenue has to prove the undisclosed income beyond doubt. Further it was held that the document should be a speaking one and it should contain narration in respect of various figures noted therein. Otherwise the same should be considered as dumb document on which reliance could not placed upon."

9. In the backdrop of above judicial pronouncement, we analyse the facts of the present case. Here a paper is found during the course of search on 6.11.2008 and assessment of search made by the AO u/s. 143(3) of the Act. In fact AO should have proceeded to act u/s. 153A of the Act. AO should also have recorded his satisfaction in this case u/s. 153A of the Act. Even otherwise, the document shown before us does not have the date of transaction where amount of Rs. 96 lakhs is alleged to have been transferred by appellant to other person. Further the AO has also stated that the transaction is also corroborated by the date of cheque transaction. We do not found any cheque transaction where assessee is involved in the present transaction which is allegedly taxed in the hands of the assessee. Much to say that there was no date of

cash transaction as alleged then it is surprised how AO has correlated the date with other transaction. Even otherwise when the assessee had denied the transactions, AO should have examined the recipient of search stated in that document and then confronted the assessee with the same. All these exercise have not at all been carried out by the AO. Furthermore, the presumption stated u/s. 292C of the I.T. Act is a rebuttal presumption. Therefore, when the assessee herself denied any such transaction, it cannot be stated that the actual transaction has taken place between the assessee and the person concerned whose name mentioned therein. Further the Circular No. 24 of 2015 dated 31.12.2015 also supports the case of the assessee that satisfaction should have been recorded in the case of the appellant u/s. 153A of the I.T. Act. As the Ld. Counsel for the assessee has also argued that no satisfaction has been recorded. The CBDT Circular which is based on the decision of the Hon'ble Supreme Court of India in the case of CIT vs. Calcutta Knitwears (2014) 43 taxmann.com 446 (SC) provides as under:-

> *SECTION 153C, READ WITH SECTION 158BD, OF THE INCOME-TAX ACT, 1961 - SEARCH AND SEIZURE - ASSESSMENT OF INCOME IN CASE OF OTHER PERSON - RECORDING OF SATISFACTION NOTE UNDER SECTION 158BD/153C OF SAID ACT*
>
> *CIRCULAR NO.24/2015 [ENO.279/MISC.l140/2015/ITJ], DATED 31-12-2015*
>
> *The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.*

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person uls 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under section 15 C of the Act; or

(b)t in the course of the assessment proceedings under section 158BC of the Act; or

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person. "

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/ pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings U/S 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.

9.1 The above Circular states that even if the AO of the search person is one and the same then he should also record the satisfaction. Leaving aside the matter on satisfaction in this case the assessment has also been made disregarding the provisions of the search as provided under Chapter XIV-B of the Act. Once again at the cost of repetition the date of search is 6.11.2008 and the assessment year involves before us is assessment year 2009-10 and further addition has been made on the basis of the document impounded during the course of search at the residence of the assessee. The AO has proceeded to make an assessment u/s. 143(3) of the I.T. Act. Therefore, the Appellant succeeds on the issue of satisfaction in view of the CBDT's Circular stated above and also on the merit as the sole addition has been based on the document in which one transaction is allegedly sold without mentioning the date and further no corroborative evidence of any investment made by the assessee was found. Further the document is also unsigned and undated, the addition made in the hands of the assessee of Rs. 96 lacs cannot be sustained. In view of this, we reverse the finding of the Ld. CIT(A) by confirming the addition of Rs. 96 crores in the hands of the assessee under the provisions of section 292C of the I.T. Act, 1961. It is also surprising to note that in the present case the penalty has been initiated under the

provisions of section 271AAA of the Act, this relates to the search assessment, but the AO has made assessment under the regular provisions of the I.T. Act.

9.2 In the background of the aforesaid discussions and respectfully following the precedents as aforesaid, we delete the addition in dispute and allow the ground no. 1 to 3 raised by the assessee.

10. With regard to ground no. 4 relating to confirming the addition of Rs. 5.67 lacs in the hands of the assessee as unexplained jewellery u/s. 69B of the I.T. Act, 1961 is concerned, we find that with respect to jewellery worth Rs. 29,18,395 found from the residential locker of the assessee out of which Rs. 17,62,445/- was seized and it was seen from the assessment order that keeping in view the social status of the assessee the AO has held that jewellery worth Rs. 11,55,950/- was treated as jewellery received by the assessee at the time of her marriage from relatives and friends and the balance jewellery worth Rs. 17,62,445/- has been treated as unexplained jewellery and taxed as income within the meaning of section 69B of the IT Act. It is however noted that the addition has been made by the AO considering the social status of the assessee hereby an allowance of jewellery worth Rs. 11,55,950/- has been given. It is a matter of record that the marriage of the assessee had taken place on 13.11.98 and that the value of jewellery has appreciated significantly over a period of 10 years from Rs. 9.93 lacs to 29.18 lacs. Accordingly, considering the social status of the assessee Ld. CIT(A) has observed that it can reasonably be estimated that jewellery worth Rs. 8 lacs would have been given at the time of marriage to the assessee from parents and relatives which would translate to jewellery of the value of Rs. 23.50 lacs as on the

date of search. Accordingly, instead of the addition of Rs. 17,62,445/- made by the AO on account of unexplained investment in jewellery (which is directed to be deleted) an addition to jewellery Rs. 5.67 lacs was confirmed as made out of unaccounted income. Accordingly, Ld. CIT(A) has directed the AO to give part relief to the assessee. However, Ld. Counsel of the assessee has stated that assessee had received all the aforesaid jewellery as gift on the occasion of her marriage on 13.11.1998 from her parents and relatives. The value of jewellery has appreciated over a period of ten years from approx. Rs. 9.93 lacs to Rs. 29.18 lacs. He stated that there is no evidence whatsoever nature with the department to prove that out of total jewellery of Rs. 29,18,395/- with the assessee, jewellery wroth Rs. 17,62,445/- seized by the Department is unexplained which is purely on arbitrary assumption. Therefore, the Ld. CIT(A) has gave part relief to the assessee and confirmed the addition of Rs. 5.67 lacs. From the above, we also find that both the authorities below have made the additions and confirmed part addition without any basis and the same is totally based on assumption only which is not sustainable in the eyes of law. It is a settled law that addition on assumption is not permissible under the law. Even otherwise, the Appellant succeeds on the legal issue of satisfaction in view of the CBDT's Circular as stated above vide para no. 9.1 of the order and therefore, the addition is not sustainable in the eyes of law. Hence, we delete the addition confirmed by the Ld. CIT(A) of Rs. 5.67 lacs towards the

unexplained jewellery u/s. 69B of the I.T. Act and allow the ground no. 4 raised by the assessee.

11. In the result, the Assessee's Appeal No. 336/Del/2012 (AY 2009-10) stands allowed.

Assessee's ITA No. 5515/Del/2013 (AY 2009-10)- SAMTA KHINDA

12. At the threshold, we note that the quantum additions on which the penalty has been imposed, has already been deleted by us, as aforesaid while dealing with ITA No. 336/Del/2012 (AY 2009-10) in the case of the assessee vide our aforesaid finding given in para no. 8 to 10. Therefore, keeping in view of the facts and circumstances of the case, the penalty in dispute will not survive. Accordingly, we set aside the orders of the authorities below and delete the penalty in dispute and allow the Appeal filed by the Assessee.

13. In the result, both the Appeals filed by the Assessee stand allowed.

Order pronounced in the Open Court on 29/11/2016.

SD/- **SD/-**

[O.P. KANT] **[H.S. SIDHU]**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
Date 29/11/2016

"SRBHATNAGAR"
Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY By Order,

Assistant Registrar,
ITAT, Delhi Benches