

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.68/Vizag/2013**  
(निर्धारण वर्ष / Assessment Year: 2006-07)

ACIT, Central Circle,  
Vijayawada

(अपीलार्थी / Appellant)

M. Ananda Kishore,  
Vijayawada  
[PAN No.ABYPM1623N]  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यार्थी की ओर से / Respondent by

: Shri R. Govinda Rajan, DR  
: Shri C. Subrahmanyam, AR

सुनवाई की तारीख / Date of hearing : 26.07.2017  
घोषणा की तारीख / Date of Pronouncement : 18.08.2017

**आदेश / ORDER**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals) {CIT(A)}, Vijayawada dated 14.12.2012 for the assessment year 2006-07.

2. The assessee is an individual filed the return of income on 30.7.2006 declaring total income of ₹ 1,20,620/-. The assessment was

completed u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter called as 'the Act') by an order dated 31.12.2008 on total income of ₹ 1,06,75,300/-. A search u/s 132 of the Act was carried out in the residential premises of Shri K. Koteswara Rao and Gowtham Residential Junior Colleges group on 24.7.2006. During the course of search, a loose sheet marked as A/KKR/GCS/10 was found and seized from the residential premises of Shri K. Koteswara Rao. As per the loose sheet found, there was a noting indicating Mr. Koteswara Rao and B. Venkatadri, son-in-law of Shri Koteswara Rao have purchased 2.41 acres of land for a consideration of ₹ 1,45,61,300/- and registered for a sum of ₹ 38,86,000/- as per the details given below:

| S.No. | Property & the name of the buyer | Dt. Of the transaction | Amount of registered consideration | Consideration as per seized material |
|-------|----------------------------------|------------------------|------------------------------------|--------------------------------------|
| 1.    | Ac.0.45 K.K.R.                   | 22.10.2005             | 720000                             | 2128500                              |
| 2.    | Ac.1.96 B. Venkatadri            | 22.10.2005             | 3166000                            | 12432800                             |
| 3.    | Total                            |                        | 3888000                            | 14561300                             |

3. The A.O. assessed the difference amount of ₹ 1,06,75,300/- representing the difference amount of (₹ 1,45,61,300 (-) ₹ 38,86,000/-) as on money received by the assessee for sale of the property under the head "long term capital gains". Aggrieved by the order of the assessing officer, the assessee went on appeal before the CIT(A) and the Ld. CIT(A) deleted the addition made by the A.O. holding that the assessee

has not received the on money. For ready reference, we extract relevant paragraph of CIT(A)'s order in page no.7 para-7 as under:

*"7. I have gone through the submissions made on behalf of the appellant and gone through the assessment order. Before proceeding further, it may be noted here that virtually purchaser was Shri K. Koteswara Rao, who has in company of his son in law has purchased the property from the appellant. Based on a paper seized in course of search and seizure operations in the premises of K. Koteswara Rao, on money payment by K. Koteswara Rao to the appellant at Rs. 1,06,73,014 was alleged and made addition Under section 69B, which was deleted by the undersigned vide appellate order in Appeal No. 7011R./CIT(A)NJAI2009-10, dated 01.11.2012. Since the AO has made an assessment in the case of the appellant, who is the alleged recipient of the impugned on money in terms of the provisions of section 1530, from the purchaser K. Koteswara Rao, as mentioned herein above, block assessment has been completed, by bringing to tax the alleged capital gains attributable to the receipt of the on money. Since, the undersigned has adjudicated the same issue in the case of the alleged payment of on money by not sustaining such addition, as stated above; the same analogy applies here. That is, since the payment in the hands of Shri K. Koteswara Rao and the addition made by the AO on that count was deleted by the undersigned, the same holds good in the hands of the recipient also. Thus, it has to be held that the appellant was not in receipt of the so called on money. If that is the case there is no question of suppression of capital gains and the addition made in the hands of the appellant is infructuous and as such the AO is directed to delete the same."*

4. Aggrieved by order of the Ld. CIT(A), the revenue is in appeal before us. Appearing for the revenue, the Ld. D.R. argued that there was a document found at the time of search in the premises of K. Koteswara Rao indicating that the assessee had received the on money for sale of the lands. It was clearly mentioned in the loose sheet that the cost of land was ₹ 1,24,32,800/- for 1.96 acres of land relating to B. Venkatadri and

₹ 21,28,500/- in respect of 0.45 acres purchased by Shri K. Koteswara Rao. Since the document found at the time of search was a valid piece of evidence, the A.O. has rightly brought to tax the difference amount under the head "capital gains" and therefore the Ld. D.R. argued that the order of the Ld. CIT(A) required to be set aside and the order of the A.O. to be restored.

5. On the other hand, the Ld. A.R. appearing for the assessee argued that there was no search and seizure operation conducted in the assessee's premises. There was no incriminating material or any other evidence found in the premises of the assessee indicating the on money was received by the assessee. The assessee has never received any on money for sale of the landed property. The property was sold for a consideration of ₹ 7,20,000/- to Mr. Koteswara Rao and for a sum of ₹ 31,66,000/- to Mr. B. Venkatadri and got registered the document for the same consideration. The registered document is valid piece of evidence which cannot be ignored. No other evidence was brought on record by the revenue to hold that the assessee has received the on money. Even the purchaser Mr. K. Koteswara Rao has denied having made the payment of any on money. In the circumstances, the Ld. A.R. argued that there is

no case for making any addition in the hands of the assessee and no interference is called for in the order of the Ld. CIT(A). The Ld. A.R. relied on the order of this Tribunal on a similar facts in the case of Shri P. Koteswara Rao, in ITA No.251/Vizag/2012. The Hon'ble coordinate bench on the similar facts decided the issue in favour of the assessee considering the decision of Shri Venkata Rama Sai Developers Vs. DCIT in ITA No.453/Vizag/2012 dated 6.11.2015 as under:

*"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."*

*9. The assessee relied upon the decision of ITAT Hyderabad 'A' Bench, in the case of K.V. Lakshmi Savitri Devi Vs. ACIT (2012) 148 TTJ 157. The coordinate bench of this Tribunal, under similar circumstances 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 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/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 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 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 as 'A/CRK104' 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 are some piece of evidence to make the addition. The AO 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 Ps. 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 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 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**”

10. The assessee relied upon the decision of Hon'ble A.P. High Court, in the case of K. Lakshmi Savitri Devi in ITA No.563 of 2011. The Hon'ble A.P. High Court, while upheld the order of ITAT 'A' Bench, in the case of K. Lakshmi Savitri Devi, observed 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 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 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."*

11. *The Hon'ble Supreme Court, in the case of CIT Vs. P.V. Kalyana Sundaram (2007) 294 ITR 49, under 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."*

12. *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."*



6. The assessee also placed reliance on decision in the case of DCIT, Guntur Vs. M/s. Bommidala Realty Ltd., Guntur in ITA No.241/Vizag/2012 dated 7.3.2017, wherein Hon'ble ITAT held as under:

"7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee - M/s. Bommidala Realty Ltd. had sold the property to Sri V. Sampath through a registered sale deed on 19/02/2007 for a sale consideration of 2.75 crores. Subsequently, a survey was conducted in the business premises of Sri V. Sampath under section 132 on 06/06/2007, where a diary of Sri V. Sampath was found, wherein it has been noted as under:-

C-2.85 D-2.75 dated 15/12/ - Rs. 1 (c)(Adv.)

|       |   |  |
|-------|---|--|
| 20/12 | - | Rs. 10 lakhs (D) and                               |
| 20/12 | - | Rs.2,84,00,000 (c)                                 |
| 16/2  | - | Rs. 2,65,00,000(DD)                                |
|       |   | Rs. 5,60,00,000                                    |
| 16/2  | - | Sub-Registrar - Rs. 2 lakhs (DD No.461966)         |
|       |   | (Cash Rs. 2 lakhs for stamp duty and registration) |
|       |   | Registrar - Rs. 3 lakhs                            |
| Somu  | - | Rs. 5,50,000                                       |
| Total |   | Rs. 3,36,70,000                                    |

From the above notings, the Assessing Officer came to a conclusion that "C-2.85" and "D-2.75" refers to the payments made to the assessee M/s. Bommidala Realty Ltd. in cash and demand draft respectively. Thus, opined that the actual consideration received by the assessee was 5.60 crores. During the course of assessment proceedings, the Assessing Officer by considering the explanation given by Sri V. Sampath, particularly to question No.8 wherein Sri V. Sampath has offered an additional amount as per the notings in the diary as unaccountable expenses, came to a conclusion that an additional income of 2.85 crores has received by the assessee M/s. Bommidala Realty Ltd, in this context. There is nothing on record that Sri V. Sampath has given a statement during the course of search that he paid 2.85 crores over and above the sale price to the assessee. There is also no evidence that the assessee has received an amount of 2.85 crores from Sri V.Sampath. During the course of survey, no material was found to show that the assessee has received 2.85 crores from Sri V. Sampath. The Assessing Officer has also not made any independent enquiry in respect of on money payment. Simply based on the notings of the diary and the statements recorded during the course of search in the case of Sri V.

*Sampath, though he referred nothing relating to the assessee, came to a conclusion that the assessee has received 2.85 crores on money over and above the registered consideration of 2.75 crores. We find that the Assessing Officer had not brought any corroborative evidence and also not made any independent enquiry and only based on loose sheet notings, he came to a conclusion that assessee has received on money. In our opinion, the conclusion reached by the Assessing Officer was not supported by any evidence and basis and no Circumstantial evidence, but it is only a mere surmises. Therefore, we are of the view that the addition made in the hands of the assessee cannot be sustained and deserves to be deleted. The Coordinate Bench of this Tribunal has also considered the evidentiary value of the loose sheet found in the course of search in the case P Koteswara Rao (supra) and held that addition cannot be made based on the loose sheets found in the premises of the third party, unless there is a supportive evidence to show that on money is made."*

7. We have heard both the parties and perused the materials available on record. A search u/s 132 of the Act was carried out in the business premises of K. Koteswara Rao and a loose sheet was found and seized containing the details of the land cost. The A.O. made addition on the basis of the loose sheet found in the premises of Mr. Koteswara Rao concluding that that the purchaser has made the payment of on money to the vendor amounting to ₹ 1,06,75,300/- and the Ld. CIT(A) has decided the issue in favour of the assessee. No other evidence was found and no other document was placed before us evidencing the receipt of on money. It is a settled issue that the revenue has to establish that the assessee has received the amount over and above the registered document price. The loose sheet found in

the premises of a searched person is not sufficient to prove that the vendor has received the consideration over and above the document price, at best it can lead to suspicion and the addition is not permissible on surmises. The assessing officer has to make independent enquiries to hold the additional amount said to be paid to vendor. The revenue has not made out a case that the document was under stamped and the land valuation was under stated. There was no evidence for transfer of on money. In fact the purchaser has denied having paid any on money to the assessee. Therefore we are unable to accept the contention of the revenue regarding the on money payment.

The appeal in the case of Shri K. Koteswara Rao has come up before us and we have deleted the addition of on money payment as per the following discussions:

*14. We have heard the rival submissions and perused the materials available on record. A search u/s 132 of the Act was carried out in the case of the assessee on 24.7.2006 and on subsequent dates. During the course of search, the investigation wing found a loose sheet containing the land cost of 2.41 acres. As per the loose sheet, the payment was of ₹ 1,24,32,800/- was paid towards the cost of 1.96 acres of land purchased for Shri B. Venkatadri and a sum of ₹ 21,28,500/- was paid for purchase of 0.45 acres of land purchased for the assessee. The lands were registered for a sum of ₹ 31,66,000/- and ₹ 7,20,000/- respectively. During the course of search, the assessee has denied the payment and also contents of the loose sheet. The assessee also denied that the note was not made in his hand writing and also he could not explain in whose hand writing the noting was made. The revenue has examined the vendors Mr. M. Anand Kishore. Mr. Anand Kishore has also denied having received the payment of on money for sale of lands. The questions and*

answers and the contents of the statement recorded from Mr. Anand Kishore are as under:

"Q9. Please examine the seized material number Annexure-KKR/GCSIR-10, page-2 and tell the details and what was the amount received by you from buyers. Please give the details?

A) The figures mentioned in that paper do not relate to me I received from Sri Koteswara Rao Rs.16 lakhs per acre. He has not paid me any extra money.

Q10. Did you receive any advance for the above transaction from Sri Koteswara Rao?

A) I did not receive any advance from Sri Kotewara Rao. This is true.

Q11. Please remember once again and confirm whether you received any advance?

A) In respect of the above transaction I did not receive any advance from Sri Koteswara Rao. Except the two cheques referred to above I did not receive any advance.

Q12. Please examine once again Annexure-A/KKR/GCS/R10, page-2 and give the details?

A) I do not know.

Q13. In the above page K.K.R, Ac.0.45 @Rs.47.30 lakhs was mentioned. Please go through the same and tell what was the amount YOU paid to Sri Koteswara Rao?

A) I do not have any connection to the above paper. I sold land to Sri Koteswara Rao @Rs.16 lakhs per acre.

Q14. In Annexure-KKR/GCS/R10, page-1, it was marked Ac.0-45. Please tell whether that land is yours or not and whether you sold the same to Sri Koteswara Rao or not?

A) That land Ac 0-45 is mine. I sold it to Sri Koteswara Rao. This is true but I do not know about the mark in the map.

Q.15. When did you purchase the land situated in Goodavalli which was sold to Koteswara Rao and his son-in-law?

A) I purchased the same in the year 2001 from Sri Posani Pattabhi Rama Rao of Vijayawada @ Rs.4,25,000/- per acre.

Q16. In Annexure-KKR/GCS/R-10, page-2, it was mentioned as under:

|                                  |                    |
|----------------------------------|--------------------|
| "B. Venkat Ac 0.60 @Rs.100 lakhs | - 60,00,000        |
| Ac 1.36 @Rs. 47.30 lakhs         | - <u>64,32,800</u> |
|                                  | 1,24,32,800        |

*Please examine the above details and tell whether you sold or not to B.Venkat the above land for the value mentioned above?*

*A) The above details do not belong to me. It is true that I sold the land to B.Venkat but @Rs.16 lakhs per acre. This is true.*

*Q17. Do you want to say anything?*

*A) No"*

*15. Both assessee and the vendor have denied that on money was exchanged for transfer of land of 2.41 acres. No other evidence was brought by the A.O. to establish that on money was exchanged between the parties. The Ld. CIT(A) deleted the addition as per page 6 para 5C, which is extracted as under:*

*"5C. Regarding unexplained investment of Rs.106,73,014/- added under section 69B by the AO, the brief facts are that the appellant and his son in law have purchased landed property from one Shri Musunuri Ananda Kishore for an agreed price and registration also took place on 22.10.2005. Subsequent to this date, search action under section 132(1) took place on 24.07.2006 in the residential premises of the appellant, wherein bundle of loose sheets were seized under identification mark A/KKR/GCS/10, in which one of the papers was regarding workings of the alleged purchase and development of impugned property. This paper contained no names, but workings of the price of the property, stamp duty, registration charges etc matched perfectly, but there was a difference in the purchase price of Rs. 1,06,73,014, which was added under section 69B, which was disputed in toto. In this background, I have again and again perused the assessment order; copy of impugned document, written submissions made by AR. I find that AO has made addition on the basis of document seized from the premises of the appellant. Since the impugned document was seized from the premises of the appellant, the AG solely depended on it for the impugned addition. It may be noted here that the ADI has conducted survey under section 133A in the premises of the seller of the property Shri Musunuri Ananda Kishore presumably to find evidence to strengthen the case that the seller of the property must have received on money from the purchaser of the property by K. Koteswara Rao, i.e., the appellant. The results of survey has not yielded desired results of the ADI, as no material was found to clinch the evidence that the seller received on money or that in course of recording the sworn statement, the seller of the property denied receiving on money. It may however be noted here that no independent enquiry was made by the AO nor any evidence to support his contention was brought on record. The document seized*



*had no relevance in absence of any supporting evidence regarding payments made. No agreement, receipt etc. was recovered during the course of search/survey. The Revenue has also not made any enquiries from the property dealers, vendors, etc. to establish that the appellant paid any amount, over and above the apparent consideration in purchase of the said property. I have also gone through the contents of the paper seized. Admittedly this paper dated nil is a vague one tallying in all respects except the purchase price. Any document seized has to be corroborated by bringing evidence to clinch the issue of payments of on money. It may however be noted here that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the Income-tax Act, but the broad principles of law and evidence do apply to such proceedings. Further an entry in the books of account maintained in the regular course of business is relevant for purposes of considering the nature and impact of a transaction, but noting on slips of paper or loose sheets of paper cannot fall in this category. Noting on loose sheet of papers are required to be supported/ corroborated by other evidence and which may include the statement of a person, who admittedly is a party to the noting. In this case, no such evidence was brought on record by AO. It is important to note here that it cannot be disputed that the burden to establish that the appellant has made investment of a sum in exceeding to the declared consideration, rests on the Revenue. The mere rough working sheets seized from the premises of the appellant cannot be any evidence to establish that the alleged consideration was paid by appellant. In this connection the judgment of the Supreme Court in the case of K.P. Verghese (1981) 131 ITR 597 is relied. Thus, after considering totality of the case and documents, I find that in the absence of any such evidence, and the investment having been proved, no addition could be made under section 69B of the Income-tax Act. The AO is not justified in making the addition of Rs.1 06,73,014/-on account of undisclosed investment by way of payment of on-money in excess of money mentioned in sale deed of this property. Hence, I direct him to delete this addition of Rs.1 06,73,014/-."*

*16. The Ld. A.R. relied on the decisions of this Tribunal cited (supra). Respectfully following the decisions of this Coordinate bench in the case of cited (supra), we hold that the A.O. has not made out a case for on money payment and we do not find any infirmity in the order of the Ld. CIT(A) and accordingly, the appeal of the revenue is dismissed."*

8. Since there was no evidence brought on record by the revenue to establish that there was on money payment received by the vendor, we

do not find any reason to interfere with the order of the Ld. CIT(A) and the same is upheld.

9. In the result, the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 18<sup>th</sup> Aug'17.

Sd/-  
(वी. दुर्गराव)  
(V. DURGA RAO)

Sd/-  
(डि.एस. सुन्दर सिंह)  
(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 18.08.2017

VG/SPS

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

1. अपीलार्थी / The Appellant – The ACIT, Central Circle, Vijayawada
2. प्रत्यार्थी / The Respondent – Sri Musunuru Ananda Kishore, D.No.54-16/9/2, Sri Nagar Colony, Venkateswarapuram, Vijayawada.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, VISAKHAPATNAM