



EIRC NEWSLETTER

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

EASTERN INDIA REGIONAL COUNCIL

EXUBERANTLY INNOVATING WITH RADIATING COGNITION

2019



HAPPY NEW YEAR



EIRC PAYS TRIBUTE

EIRC wishes Happy Republic Day



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ASP + GSP SERVICES CHARGES (Free Trial for 30 Days)

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Slabs	Service charges
Upto 9,000 transactions per year	₹ 2,700 per year*
Beyond 9,000 transactions during the year	₹ 0.30 per transaction*

Tax Consultants (TC) / CAs / TRPs

Slabs	Service charges
For 10,000 transactions during the year with unlimited GSTINs	₹ 3,000*
Beyond 10,000 transactions during the year	₹ 3,000 for every 10,000 transactions*

(*GST as applicable)



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020- 25678300

Chairperson writes



Dear Esteemed Colleagues,

A very happy and prosperous new year to all of you ! Hope you all spent the last day of the deleting year and the inaugurating day of the first year with all liveliness and grandeur that the days demand from us. The very word "new" implies a lot to everyone especially for the professionals like we the Chartered Accountants

who are extremely keen to reckon and initiate, try and invent and work on newer concepts and ideas. In line with this, many a change to the old have taken place in our profession with so many dynamism is being seen. I am happy to note that the changes are actually taking a lead role and should be ideally reposed in shaping our profession which are being instrumental in taking our country at a novel height.

But at the same time we should remind ourselves that global climatic changes has been a grave concern and a threat to our dear loving planet. Myriad plants and animals are being affected and harmed by it. We are inviting unpredictably dangerous diseases. Hence nature should be taken care of. We should conceive and accordingly, steps should be initiated and the same be propagated in a manner so that an awareness gets permeated from a great to greater lot. I also invite suggestions from your end in this regard to present a more fruitful and lasting solution to this global environmental crisis.

My one suggestion and advice to the students who are doing articleship and it is that they must understand the need for doing articleship in a regular way with keeping it in mind that doing articleship gives you exposure to the practical hardships and knowhow of the working procedure and in the process aspirants come to know the

importance of Chartered Accountants in the society. I hope that they would connect to what I said and no attempt to evade this crucial and significant phase of their study would be exercised.

In this year, we must take an oath that we will learn from the previous year and will act accordingly. So many things we have to accomplish. So many dreams we need to make realities.

The robust steps that had taken place in Indian Financial sphere with the introduction of GST. GST is playing a pivotal role in structuring the Indian Economy, which in the long run is showing strength of taking our country at the helm of global financial firmament. However, in the package of January 2019, we have a throng of seminars along with Cricket Match of our members. With optimum emphasis on GST especially in the area of GST Audit and filing of GST Annual Return, we have organised seminars on GST, plus a mega seminar on GST which will be held on 30th January 2019 at Kalamandir Auditorium.

However, during my tenure here as the chairperson, I tried my utmost to uphold the objectives of our Institute and accordingly I worked for my Institute, sparing no stones unturned so far my vision goes.

Finally I would like to say my thankfulness to all of you coming up with all your gestures to make almost all of my initiatives successful. Hope that my successors will move it forward in the right direction.

Signing off wishing that every sunrise of this new year goes on widening the horizon of your success.

Best Regards,

Sonu Jain

(CA Sonu Jain)

Chairperson, EIRC

DAY AND DATE	KNOWLEDGE SESSION	RESOURCE PERSON *	COORDINATOR	VENUE	DURATION	CPE HOURS	DELEGATE FEES ₹
Friday, 4th January 2019	Seminar on Critical Analysis of Recent Changes by GST Council & GST Annual Return & Audit	CA Gagan Kedia CA Anshuma Rustagi	EIRC	R Singhi Hall, EIRC Premises, Russell Street	5.30pm to 8.30pm	3	100 + GST Spot 150
Friday, 11th January 2019	Seminar On Penalties Under GST & Inspection, Search And Seizure	CA Shubham Khaitan CA Ankit Kanodia	EIRC	R Singhi Hall, EIRC Premises, Russell Street	5.30pm to 8.30pm	3	100 + GST Spot 150
Tuesday, 15th Wednesday 16th and Thursday 17th January 2019	3 Days Workshop on Insolvency and Bankruptcy Code	CA Sonu Jain, Chairperson, EIRC CA Subodh Kumar Agrawal, Past President, ICAI, CS Ravi Verma, CS Deepak Khaitan *, CA R R Modi *	EIRC	R Singhi Hall, EIRC Premises, Russell Street	5.30pm to 8.30pm	9 3 DAY	300 + GST Spot 450 100 + GST Per Day Spot 150 Per Day
Friday, 18th January 2019	Seminar on Input Tax Credit & Recent GST Amendments & Advanced Rulings	CA Shivani Shah CA Vikash Parakh	EIRC	R Singhi Hall, EIRC Premises, Russell Street	5.30pm to 8.30pm	3	100 + GST Spot 150
Friday, 25th January 2019	Seminar on Impact of GST on Charitable Trust GST on Real Estate & FAQ	CA Chiranjib Das CA Abhishek Tibrewal	EIRC	R Singhi Hall, EIRC Premises, Russell Street	5.30pm to 8.30pm	3	100 + GST Spot 150
Wednesday, 30th January 2019	GST Annual Audit & GST Annual Return	CA Bimal Jain* and other Eminent Speakers	EIRC	Kalamandir	2.00pm to 8.00pm	6	400 + GST Spot 700

* Confirmation awaited.

Note: 1. Please note Online registration closes 1 days before the day of the Seminar.

3. Out of the Registration Fees collected for each programme Rs.10 per person would be contributed to Chartered Accountant Benevolent Fund.

5. *Resource Person may change without prior information.

2. Spot Registration will be taken subject to availability of seats at the venue.

4. Spot Fees is inclusive of GST if not mentioned separately.

6. GST to be charged is 18%

Important Dates

DAY AND DATE	NAME	VENUE	DURATION
Thursday 3rd January 2019	New Year Celebration	EIRC Premises	6 PM onwards
Sunday 20th January 2019	Cricket Match	Bata Sports Ground *	10 AM onwards
Thursday 24th January 2019	CFO Meet	The Park *	5 PM onwards
Saturday 26th January 2019	Republic Day Celebration (provision for hi tea)	EIRC Premises	10 AM onwards

Treatment of Notings on Loose Sheets found during Survey or Search and requirement of Corroborative Evidence

Narayan Jain, LL.M., Advocate

In practical life we find in course of survey or search Loose Papers are found and these are impounded in case survey or may be seized in case of a Search. The department tends to make additions on the basis of entries found on such loose papers and its treatment becomes a matter of contention. In this article we are analyzing some judicial decisions regarding Evidentiary Value of such Loose Papers found during Survey / Search. In most of the cases, the ITAT and Courts have insisted on requirement of Independent Corroborative Evidence to make addition in income on the basis of such loose sheets. Let us see the relevant decisions:

1. **CBI v. V.C. Shukla AIR 1988 SC 1406** : [1998] 3 SCC 410: Loose sheets have been ruled out as of any evidentiary value. Loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting it is not the record of the assessee. Even assuming such entries as correct and authentic they cannot without independent evidence fix a liability upon a person. In that connection the court also referred to Section 9 of the Evidence Act and observed that even if such entries are admissible under the said provisions to support an inference about correctness of the entries still such entries would not suffice without supportive independent evidence. They have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Even entries in the books of account need corroboration before acting against the third party on the basis of any entry in the books of account of a person.

Any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and hence legal unless there is corroboration by corresponding entry in regular accounts of both the parties to the transaction.

2. **CIT v. P. V. Kalyanasundaram [2007] 294 ITR 49 (SC) [decision of the Madras High Court in CIT v. P. V. Kalyanasundaram [2006] 282 ITR 259 affirmed]**: Assessee purchased certain land at a consideration as shown in sale deed executed. During a search operation, certain notes on loose sheets allegedly written by assessee were found and seized. When confronted, assessee contended that he could not remember as to why said notings had been made but vendor admitted in his statements that he received substantial cash amount over and above sale deed amount. Though said statements were subsequently retracted by vendor, the A.O. adopted said enhanced figure admitted by vendor as actual sale consideration for purpose of assessment and made addition of difference as assessee's undisclosed income. The CIT(Appeals) deleted addition on ground that vendor's contradictory statements could not be relied upon. The Tribunal affirmed the decision of the CIT(Appeals) and the High Court dismissed revenue's appeal in limine on premise that no substantial questions of law were raised by revenue.

On appeal by the Department before the Supreme Court, it was held, that the fact as to actual sale price of property, implication of contradictory statements made by the vendor or whether reliance could be placed on the loose sheets recovered in the course of the raid, were all questions of fact, and there was no infirmity in the order of High Court.

3. **State Of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr AIR 1963 SC 1850: 1964 SCR (3) 297**: Held that absence of corresponding entry in the account of the opposite party precludes the alleged transaction. [It is not the case of the AO that there is corresponding entry in the assessee's account supplying corroboration].
4. **Mahasay Ganesh Prasad Ray v. Narendra Nath Sen AIR 1953 SC 431**: Loose papers seized could not be regarded as accounts within the meaning of section 90 of the Evidence Act. [Referred in Addl. ITO v. T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.)]
5. **S.P. Gramophone Co. v. CIT [1986] 158 ITR 313 (SC)**: Held that an unsigned paper containing allocation of profits amongst the partners has no evidentiary value. [Referred in Additional Income-tax Officer v. T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.)]
6. **Asstt. CIT v. Ravi Agricultural Industries [2009] 117 ITD 338 (Agra) (TM)**:

[2009] 121 TTT 903 (Agra): In a survey u/s 133A the revenue authorities found certain loose papers on which some numerical entries were recorded. The assessee explained that noting on the piece of paper has nothing to do with the unexplained investment made by the assessee. The A.O. made addition to the assessee's income on the basis of loose papers without any other supportive evidence. The Commissioner (Appeals) deleted the addition. The Hon'ble Tribunal, both the Third Member agreeing with Judicial Member, held in para 11:

".....Now looking at the paper, it has some numerical figures but does not, in any way, show that it has some relationship with some business transactions of the assessee. The paper that was taken as a material for making the addition does not conclusively establish that it pertains to the business transaction of the firm. Now, the department is making the addition as a part of unexplained investment. What sort of investment the department has found is also not clear from the assessment order. The addition, in sum and substance, made by the department is clearly not supported by any material, which can point out to unexplained investment outside the books of the assessee. ..."

Similar view was taken in ITO v. Smt. Pratibha Goyal [2011] 14 taxmann.com 50 (Jaipur): [2011] 132 ITD 517 (Jp.): [2011] 136 TTT 597 (Mum.) wherein reference was made to Mumbai Bench of the Tribunal in the case of Universal Impex v. ITO [IT Appeal No. 444 (Mum.) of 2007, dated 7-5-2009] held that addition made on the basis of statement of one of the partners and entries recorded in the diary cannot be upheld solely on the strength of the statement without any supporting material. The onus was on the AO to collect supporting material and since the AO has not discharged his onus, therefore, the addition was deleted.

7. **S.P. Goyal v. Dy. CIT [2002] 82 ITD 85 (Mum.) (TM)**: The Tribunal has held that:

"... loose papers cannot be termed as books of an assessee maintained for any previous year. Loose sheet of paper torn out of a diary could not be construed as books for the purpose of section 68. Addition could not be made simply on the basis of certain notings on loose sheets of a diary without any corroborative evidence in the form of extra cash, jewellery or investment outside the books. The loose papers appear to be part of a 1992 diary. However, these loose papers consist of pages torn out from March, April, November and December. There is no closing balances or opening balances and there is no reconciliation of these entries. Therefore, it cannot be termed as books maintained by the assessee during the previous year. ... The loose paper in itself has got no intrinsic value. ...When it is a mere entry on a loose sheet of paper and if the assessee claims that it was only a planning, not supported by actual cash, then there has to be circumstantial evidences to support that this entry really represent cash of Rs. 60 lakhs. There is no such evidence found by the Revenue in the form of extra cash, jewellery or investment outside the books."

8. **CIT v. Maulikkumar K. Shah [2008] 307 ITR 137 (Guj.)**: The decision of Commissioner of Income-tax (Appeals) and the Tribunal were upheld holding that no addition was justified on the basis of these loose papers. In this case, notings in the seized diary found from the premises were the only material on the basis of which the A.O. had made the impugned additions. The A.O. had not brought any corroborative material on record to prove that such sales were made and 'on-money' was received by the assessee outside the books of account. The A.O. had not examined any purchaser to whom the sales of shops were effected. Onus heavily lay on the revenue to prove with corroborative evidence that the entries in the seized diary actually represented the sales made by the assessee. Such onus had not been discharged by the revenue. Mere entries in the seized material were not sufficient to prove that the assessee had indulged in such a transaction.

The inference of the A.O. that the assessee has received 'on-money', was merely based on suspicion and surmises and there was no material whatsoever to support the conclusion of the A.O. that the assessee had in fact received any 'on-money'. The addition as made by the A.O. being based on mere presumptions

and assumptions and without any corroborative evidence, could not be sustained.

9. **Amar Jeet Singh Bakshi (HUF) v. ACIT [2003] 86 ITD 13 (Delhi) (TM) :** (2003) 263 ITR (AT) 75 (Del) (TM): Held that any noting in the loose sheet is no evidence by itself. 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 notings on slips of paper or loose sheets of paper cannot fall in this category. Notings on loose sheets of paper are required to be supported/ corroborated by other evidence which may include the statement of a person, who admittedly is a party to the notings. It was further observed in that case that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the IT Act, but the broad principles of law of evidence do apply to such proceedings.

The entire addition in the hands of the assessee was based on the document found, but there was no iota of evidence to support the revenue's case that a huge figure whatever be its quantum over and above the figure booked in the records and accounts changed hands between the parties.

10. **CIT v. Atam Valves (P.) Ltd. [2009] 184 Taxman 6 (P&H):** [2011] 332 ITR 468 (P&H): The High Court dismissed the Revenue's Appeal and held that no substantial question of law arose out of the Order of the Tribunal. In this case, a survey was conducted u/s 133A and certain incriminating documents were found including a 'Slip Pad' containing payment of wages to various persons. The slips were written by Manoj Jain, an employee of the assessee, who was confronted with the slips, apart from questioning of the Director. It was held by the Tribunal that even though explanation of the assessee that the loose papers did not relate to payment of wages during the year in question may not be accepted, in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the A.O. It was observed by the Tribunal (as quoted):-

"Now the question is regarding estimating the income on the basis of these loose slips. In our opinion, the Assessing Officer is not justified in estimating the sales on the basis of loose slips without substantiating that the assessee has actually made the sales to that extent of estimation made by the Assessing Officer and having no iota of evidence in the form of sale bills or bank account or movable and immovable property which represent earning of unaccounted income by the assessee. As such, the Id. CIT(A) to that extent is justified in holding that estimation of sales on the basis of loose slips represented payment of wages is not possible."

11. **Nagarjuna Construction Co. Ltd. v. DCIT, Central Circle-III, Hyderabad [2012] 52 SOT 178 (Hyd.):** Held that:

"... The basis for addition is only note book/loose slips. These note books/ loose slips are unsigned documents. The Assessing Officer has not established nexus between the note book loose slips with accrual actual/receipt of interest. The note book/loose slips seized found during the course of search is a dumb document having no evidentiary value, no addition can be made in the absence of corroborative material. If there is circumstantial evidence in the form of promissory notes, loan agreement and bank entries, the addition is to be made on that basis to the extent of material available. The assessee is not expected to explain the loose papers found as there is no evidence other than note book/ loose slips regarding accrual of interest. It is held no addition can be made on the basis of dumb documents/note book/loose slips in the absence of any other material to show that the assessee has carried on money lending business. Nothing on the note book/diary /loose sheets are required to be supported/ corroborated by other evidence and are also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the note book/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. In the instant case, undoubtedly no statement from the parties whose names found in the note book/loose slips has been brought to the notice and as such entire addition in the hands of the assessee on the basis of uncorroborated writings in the loose papers found during the course of search is not possible."

12. **CIT v. Ravi Kumar [2007] 294 ITR 78 (P & H):** The assessee was found to be in possession of loose slips and not of any valuable articles or things. Neither

the possession nor the ownership of any jewellery mentioned in the slips was proved. Held that, the assessee had discharged the onus by explaining that slips contained the rough calculations and it was for the revenue to prove that the same represented the transaction of sale of stock-in-hand. Further, even if the assessee had failed to explain the contents of the slips, it was for the Revenue to prove on the basis of material on record that the same represented transactions of sales or stock-in-hand before making any addition on this score. The assessee had duly explained that these were rough calculations and the assessee's explanation has not been rebutted by any material evidence.

13. **T.S. Venkatesan v. Asstt. CIT [2000] 74 ITD 298 (Cal.):** Held that in the absence of corroborative evidence, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from the residence of a third party and certain general statements of said party.
14. **Additional Income-tax Officer v. T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.):** In absence of any external evidence, addition cannot be resorted to only on the basis of loose papers. The department had not brought on record any evidence to prove conclusively that the seized documents contained details of secreted profits which were chargeable to tax. No doubt, the seized papers contained statement in figures of what appeared to be the financial results of certain unnamed transactions but there was nothing either in law or in logic to warrant the conclusion that the figures denoted secreted profits which were chargeable to tax. The details of distribution contained in the seized papers did not by themselves present a preponderance of probabilities so as to support department's case that what was distributed was taxable income.
15. **Smt. Bommana Swarna Rekha v. Asstt. CIT [2005] 147 Taxman 59 (Vishakhapatnam) (Mag.):** During search, a piece of paper was seized which was without any name, date or signature. The A.O. treated part of transaction mentioned in the loose paper as relating to the assessee and made certain addition in her hands as unexplained expenditure. It was held that the onus was on the Assessing Officer to prove that transaction as stated in the said loose paper. The loose paper found and seized had to be read in toto. It could not be read as partly belonging to the husband of the assessee and partly belonging to the assessee. Since the A.O. did not bring any cogent evidence or material on record which might prove that the part of transaction stated in paper, representing transactions was entered by the assessee during the period of block assessment, the addition was deleted.
16. **CIT v. C.L. Khatri [2006] 282 ITR 97 (MP):** On the basis of loose slip not bearing any date and also not stating as to which period they related, no estimate of household expenses could be made for a particular year. In the absence of any other evidence, the estimate of household expenses in a particular year with reference to income of later year or future year was arbitrary and illogical. The Tribunal was held to be justified in deleting the additions.
17. **Prashant S. Shah 188 ITR (Statutes) 83:** The Gujarat High Court had rejected a reference application filed by the Department seeking a reference on the question whether an unsigned valuation report seized by the Department could form the basis for making additions to the capital gains returned by the assessee, and the Supreme Court dismissed the Department's Special Leave Petition. [Referred in Additional Income-tax Officer v. T. Mudduveerappa Sons [1993] 45 ITD 12 (Bang.)]
18. **D.A. Patel v. Dy. CIT [2001] 70 TTJ (Mum.) 969 :** [2000] 72 ITD 340 (Mum.): There was no evidence connecting the appellant to this seized paper. Simply because a sheet of paper was found during the search at the premises of an assessee, he could not be saddled with a tax liability unless it could conceivably be related to the assessee in some reasonable manner. Similar view taken in Parthana Construction (P.) Ltd. v. Dy. CIT [2001] 118 Taxman 112 (Ahd.) (Mag.).
19. **Atul Kumar Jain v. Dy. CIT [1999] 64 TTJ (Del.) 786:** Presumption u/s 132(4A) requires independent corroborative evidence. The Tribunal held that the seized paper being not corroborated by any independent evidence cannot be considered as a document in proof of investment in house property, and, accordingly, this paper is liable to be ignored. Held that:

"6.6 If we consider the said piece of paper seized during search, in light of the definition of the word "document" as given in the Indian Evidence Act and

General Clauses Act and truthfulness of the contents thereof in light of the aforesaid decisions of the Hon'ble Supreme Court, we find that the said paper contains jottings of certain figures by the same does not describe or express the substance of any transaction and even if the said paper has been seized from the possession of the assessee the contents thereof are not capable of describing the transactions the way the Assessing Officer has deciphered them without support of corroborative evidence of the parties attributed to the alleged transaction. The said paper, therefore, does not come within the compass of the definition of the word "document" to be used as an evidence. The paper seized, therefore, has no evidentiary value and accordingly the same cannot form the basis for assessing the undisclosed income."

20. **Devilal Gherilal Shah v. Dy. CIT [1995] 52 TITJ (Ahd.) 618:** The Tribunal held that no date or name is mentioned on the seized paper. In such a case, it is very difficult to say that the assessee purchased gold ornaments and, therefore, he should be assessed in respect of the amount mentioned therein as unexplained investment made by him. In the absence of cogent evidence on record, the addition could not be sustained.
21. **J.R.C. Bhandari v. Asstt. CIT [2003] 133 Taxman 44 (Jd.):** It was observed that in the absence of any iota of evidence on record to fasten the liability on the assessee in respect of receipt of the amounts mentioned in the entry noted on a loose sheet which was found in the possession of a third person whose statement was also not on record, addition in the hands of the assessee on the basis of said loose sheets was not legally sustainable. This view was also supported by the decision in the case of Niranjana Kumar Agarwal [IT Appeal No. 658/C/98/Kol.].
22. **Satnam Singh Chhabra v. Dy. CIT [2002] 74 TITJ (Lucknow) 976:** It was held that, "Loose paper found during the search of the assessee's premises on the letter-pad of a third party with some notings in unidentified hand writing had no evidentiary value and no addition could be made on the basis of said paper as the contents of the documents could not be linked or correlated with the assessee."
23. **Monga Metals (P.) Ltd. v. Asstt. CIT [2000] 67 TITJ (All.) 247:** It was held that it was Revenue's onus first to prove that the arithmetical figure appearing on loose papers were receipts, were in the nature of sale of ingots and amounted to undisclosed income in the assessee's hands. [As referred in Satnam Singh Chhabra v. Dy. CIT [2002] 74 TITJ (Luck.) 976]
24. **Dy. CIT v. Karodilal Agrawal [1994] 50 TITJ (Jab.) 393:** Held that the jottings in diary neither represented books of account nor any document and, therefore, presumption u/s 132(4A) was not available and addition made on the basis of jottings was deleted.
25. **Ashwini Kumar vs. ITO 39 ITD 183 (Del.):** Held, In the case of dumb document, revenue should collect necessary evidence to prove that the figures represent incomes earned by the assessee.
26. **JCIT vs. West Bengal Trading Agency, IT (SS) No. 49(Cal.) of 2001:** Held, there has to be direct or circumstantial material to establish that the intention expressed in the seized document / books has actually been implemented (vide para 8).
27. **Kantilal & Bros. v. ACIT 52 ITD 412 (Pun):** Held, a piece of paper impounded at the time of search cannot be construed to be a book. So, addition cannot be made u/s 68 based on such documents.
28. **P. R. Patel v. Dy. CIT 78 ITD 51 (Bom.):** It was held that No addition can be made on the basis of seized documents which do not bear the name of assessee.
29. **CIT v. Dhingra Metal Works [2010] 328 ITR 384 (Del.):** It was held that though an admission is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person, who has made the admission, to show that it is incorrect. It was held that, since in the instant case, the assessee had been able to explain the discrepancy in the stock found during the course of survey by production of relevant record including the excise register of its associate company, the A.O. could not have made the aforesaid addition solely on the basis of the statement made on behalf of the assessee during the course of survey.

From a reading of section 133A, it is apparent that it does not mandate that any statement recorded u/s 133A would have an evidentiary value. For a statement

to have evidentiary value, the survey officer should have been authorized to administer oath and to record sworn statement. This would also be apparent from section 132(4). It is apparent that while sec. 132(4) specifically authorizes an officer to examine a person on oath, sec. 133A does not permit the same. Moreover, the word 'may' used in sec. 133A(iii) clarifies beyond doubt that the material collected and the statement recorded during the survey are not conclusive piece of evidence by themselves.

32. **Asstt. CIT v. Ravi Agricultural Industries [2009] 117 ITD 338 (Agra) (TM):** During Survey u/s 133A, the revenue authorities found certain loose papers on which some numerical entries were recorded. At the time of survey, one of the partners of the firm agreed to surrender the amount mentioned in loose papers as an unexplained investment. Subsequently, the said partner retracted from the statement made. The Assessing Officer made addition to the assessee's income on the basis of loose papers without any other supportive evidence. The Commissioner (Appeals) deleted the addition. The Tribunal held that when partner had retracted from his statement, the impugned addition made by the A.O. should have been supported by enough material in the possession of the Department. The Tribunal upheld the order of the Commissioner (Appeals) and the decision was rendered in favour of the assessee.
33. **Pradeep Kr. Agarwal's case; IT(SS) No. 130/Kol/05, Order dated 28.09.2006:** A search & seizure operation was carried out on the assessee who was a practicing CA. He admitted in his deposition u/s 132(4) that he was engaged in Jama Kharchi transactions and has earned income of Rs. 5,40,917/- at the rate 0.5%. According to A.O., the rate is not below 5%. Accordingly, addition of Rs.54,09,174/- was made CIT(A) reduced it to 0.5%.
It was held that the contention of the revenue authorities that the assessee is engaged in jama kharch transactions and earned commission therein is merely based on the statement made by the assessee before the revenue authorities. The revenue failed to produce even before the ITAT any material in support of their allegation that the assessee was engaged in any such transactions. Courts have held that some corroboration is required before holding a person guilty on the basis of his confessional statement. In Pullangode Rubber Producer Co. Ltd.'s case (supra), Hon'ble Supreme Court held that an admission is an important piece of evidence but it is not conclusive. In the case of Sarwan Singh Rattan Singh (supra), Hon'ble Supreme Court held that it must be established that a confession is voluntary and also that it is true. For the purpose of establishing its truth, it is necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities of the case.
34. **ITO vs. Ravi Daga; IT(SS) No. 43 /K/04, order dated 28.03.2005:** Facts: Search and Seizure operation was carried out u/s 132 of the I.T. Act on 4.2.1999 in the residential premises of the assessee at Raipur. On the basis of a statement u/s 132(4) taken by the Assessing Officer on 04.02.1999, the assessee was asked to explain as to why a sum of Rs. 15 lakhs could not be treated as his undisclosed income in respect of undisclosed investment at farmhouse at Raipur and gift taken in earlier years on the basis of the statement. The assessee submitted that it had retracted his earlier statement by swearing an affidavit on 11.02.1999 and furnishing the same on 12.02.1999 before the ADIT, Raipur.
ITAT Kolkata Held- On our careful perusal of the facts and the law, we are inclined to hold that the A.O. did not have any material to suggest investment in the farmhouse in accordance with the valuation got conducted by the ADIT, Raipur. There was no basis in the hands of the A.O. to compute the undisclosed income in the hands of the assessee and his son merely on the basis of a statement recorded u/s 132(4). The statement recorded u/s 132(4) did not have any evidentiary value and no incriminating documents were found. The A.O. was precluded from estimating the undisclosed income represented by unexplained investment in the farmhouse.

35. **CIT v. Atam Valves (P.) Ltd. [2009] 184 Taxman 6 (P&H):** It was held that loose sheets by themselves may not be enough to justify addition on estimated basis even though the explanation of the assessee is found unbelievable and circumstances may be pointing otherwise. The stand of the assessee in this case was that the loose slips recording wage payment did not represent payment of wages during the year in question, but were for the earlier year. The A.O. did not accept the explanation and made an addition without bringing any other material on record and this precisely worked against the revenue. Retraction

cannot be confronted by loose papers found in premises without any other supportive evidence.

36. **CBDT Instruction dated 10.03.2003 referred in 93 ITD 117 (Ind.):** Merely surrender / confession on the part of assessee cannot absolve the department from its duty to collect evidences. There should be independent evidence of income.
37. **Pullan Gode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18 (SC):** The Supreme Court held that an admission is an extremely important piece of evidence though it is not conclusive and that it was open to the person to make an attempt to show that it was incorrect.
38. **Nagubai Armal v. Shama Rao AIR 1956 SC 100:** It was held that 'An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must be depend on the circumstances under which it is made. It can be shown to be erroneous or untrue'.
39. **Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637:** It was held that "Courts require some corroboration to the confessional statement before convicting an accused person on such a statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of circumstances of the case."
40. **CIT v. Mrs. Devi S. Luis [1974] 96 ITR 646 (Ker.):** It was held that inspite of admission it is incumbent on the department to establish by relevant proof that amount in question was income in hand of the assessee. It was for the department to prove positively on the basis of other material that there was concealment of income.
41. **View that merely on the basis of entries in loose sheets there cannot be an addition, has also been taken by various Benches of the Hon'ble Tribunal in the following cases:**
 - i. S. K. Gupta v. Dy. CIT [1999] 63 TTJ 532 (Del.)
 - ii. Shri Ram Bhagwandas Raheja v. Asstt. CIT [ITA (S&S) No. 118/Mum/1996, Bench "B", Order dated 23rd September, 1998]
 - iii. Ashwini Kumar v. ITO [1992] 42 TTJ (Del.) 644 : [1991] 39 ITD 183 (Del.)
 - iv. Kishenchand Shobhrajmal v. Asst. CIT [1992] 42 TTJ (Jp) 423

Narayan Jain is a Master of Law, an Advocate and authored the book How to handle Income Tax Problems with CA Dilip Loyalka. He is also Honorary Co-ordinating Editor of Taxman.

RETIREMENT



Dr. Alok Ray joined the legal section of ICAI at its HO, New Delhi as Assistant Secretary on 18th February 1998. He contributed as Secretary of CESURA (now ESB), CLC and as Secretary of various important Study Groups including Study Group on Section 25 of CA Act 1949. He was also closely associated with structuring and launching of Post qualification

certificate courses, Masters in Business Finance and Valuation. He joined the Regional Office at Kolkata on 6th April 2009 as Sr. Deputy Secretary heading the Members and Articles Section. He was assigned the responsibility of the head of the Regional Council Secretariat on 23.04.2014 and then he was appointed as Regional Office Head with effect from 25th February 2015. Apart from being a prolific writer and speaker, his articles on socio-legal issues are being published in CA Journal, AIR, LAB IC, Labour Law journal and in other leading law journals and Newspaper. He was also associated as visiting faculty in WBNUJS, Kolkata, Indian Law Institute, New Delhi and other prestigious Institutes. He retired from service as Joint Secretary and Regional Office Head on 31st December 2018.

RETIREMENT



Smt. Mita Sengupta, M. Com, LLB joined the service of the Institute at Kolkata office on 28th December, 1984. Served more than 33 years before she retired on 30th November, 2018 as Assistant Secretary. She was the In-Charge of Sales & Publication Cell of EIRC & EIRC Library and also Caretaker of Russell Street premises of EIRC.

2 Day National Conference on 30th & 31st December 2018



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Seminar on GST on 10.12.2018

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CA Shivani Shah



CA Gagan Kedia

Conversion of Companies & Companies Ordinance Act on 12.12.2018

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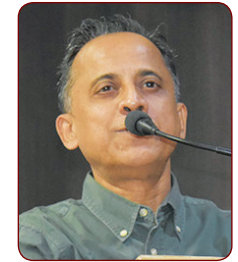
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