

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.3472/Ahd/2014

निर्धारण वर्ष/Asstt. Year: 2006-07

Shri Shantilal Ranchhoddas Patel 19, Suvarna Villa Bungalow 100 Ft. Road, Hebatpur Road Thaltej, Ahmedabad 380 001. PAN : AFUPP 8597 E	Vs.	ITO, Ward-6(5) Ahmedabad.
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आयकर अपील सं./ ITA No.3679/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2006-07

ITO, ward-3(3)(2) Ambawadi, Ahmedabad.	Vs.	Shri Haribhai Meghajibhia Patel 2, Dev Vihar Bungalows Opp: Shyam Vihar Bungalows Thaltej, Ahmedabad PAN : AETPP 8959 A
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आयकर अपील सं./ ITA No.3681/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2006-07

DCIT, Cir.3(3) Ahmedabad.	Vs.	Shri Rajnikant Kanubhai Patel 1, Heritage Lotus Opp:Mercury Farm Thaltej,Ahmedabad 380 054. PAN : ABJPP 8680 P
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आयकर अपील सं./ ITA No.3680/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2006-07

ITO, Ward-3(3)(5) Ambawadi Ahmedabad.	Vs.	Shri Upendra Ganpatram Patel-HUF 19, Jayshri Ambika Park Society Memnagar Ahmedabad 380 052. PAN : AAAHU 3480 Q
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by	:	Shri S.N. Soparkar, AR
Revenue by	:	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20/02/2019

घोषणा की तारीख/Date of Pronouncement: 21/02/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

In these group of four appeals, three appeals are directed at the instance of the Revenue against separate orders of the Id.CIT(A) dated 16.10.2015 passed on the respective appellants, vis. Shri Rajnikant K. Patel, Shri Upendra G. Patel and Shri Haribhai M. Patel, whereas the assessee (Shri Shantilal R. Patel) is in appeal against the order of the Id.CIT(A) dated 8.10.2014 passed for the Asstt.Year 2006-07.

2. Revenue has taken five grounds of appeal in each case of the assessee, whereas the assessee has taken seven grounds of appeal in the case of Shri Shantilal R. Patel. Out of these seven grounds, in Ground no.1 and 2, assessee challenged reopening of the assessment, but no arguments were advanced on this issue, hence these grounds are rejected. In the remaining five grounds in the case of Shantilal R. Patel and other three appeals, there is only one issue involved, which is common in all these cases. Before curving out of issue, let us take note of brief facts.

3. These assessees were owners and in possession of agriculture land comprising in Block No.482 and 472 located Shilaj, known as Tapovan land. This land was sold to Shri Rohit Modi and Prahaldbhai Modi on 17.1.2006. As per the sale deed,

sale consideration was disclosed at Rs.1 crore. A search under section 132 of the Act was carried out in the case of Himalya Group of cases and places of Modi. During the course of search Annexure A/1/14 pages no.48 to 55 and Annexure A/1/16 pages 82 to 85 were found at the premises of Shri Dashrathbhai Patni, one of the vendees of the land. In these papers, jottings have been made and ultimately, it was worked out that this land was purchased at Rs.11,35,46,000/-, which was sold for Rs.12,25,51,000/-. Thus, the AO harboured a belief that vendees have made payment in cash of Rs.10,35,46,000/-. He recorded reasons for reopening of the assessment. We will take note of the facts in detail a little more, but now we conform to the question, which are required to be adjudicated in these appeals, viz. whether capital gain on account of receipt of Rs.10,35,46,000/- requires to be computed in the hands of vendor in proportion to share of their rights in the land. The Id.AO has further observed that search under section 132 of the Act was carried out in the case of Shri Rajnikant Patel, one of the vendors on 23.5.2008. He has filed return on 3.4.2009 and assessment order under section 143(3) r.w.s 153A was passed on 14.5.2010. Notice has been issued under section 148 on 4.3.2013. The Id.AO has observed that since vendees have accepted payment of on-money in this land transaction in their return of income, therefore, it is to be construed that vendors might have received on-money and capital gain ought to be assessed in their hands of that on-money. He worked out short capital gain in the case of Shri Rajnikant Patel at Rs.1,76,87,688/-. This working reads as under:

"Short term capital gain

*Total sale consideration received in sale Rs.1,89,24,333/-
of Shilaj Block No.482/742 (Tapovan*

In the case of Shri Shantilal R. Patel, the Id.CIT(A) has confirmed the addition, hence the assessee is in appeal before the Tribunal.

6. The Id.counsel for the assessee while impugning the order of the Id.CIT(A) in the case of Shri Shantilal R. Patel submitted that only evidence possessed by the Revenue is a statement of Shri Rohit Modi recorded during the search action upon him. It was not recorded during the assessment proceedings of the assessee. The alleged loose papers which have been made basis for harbouring a belief that the on-money was received by the vendors were neither in the hand-writing of Shri Rohit Modi nor they were found from his possession. He also emphasised that these documents were not found from the premises nor in the hand-writing of the assessee before the Tribunal. The AO has not allowed any cross-examination of Shri Rohit Modi in the case of Shri Shantilal R. Patel, rather he was not aware about the exact nature of the evidence. Similarly, the Id.CIT(A) failed to appreciate the evidentiary value of statement of Shri Rohit Modi. It was recorded from the back of the assessee. He was not author of incriminating documents found. Thus, how can it be concluded that clinching evidence was found against the assessee? Other CITs(Appeal) in the cases of other four co-owners did not rely upon these evidences for holding that the assessee has received on-money. In the understanding of the Id.CIT(A) in the case of other co-owners, there were no evidences possessed by the Revenue to say that the assessee has received cash components. He further contended that in one of the cases of co-owners, this finding of the Id.CIT(A) has even been upheld by the ITAT. Therefore, according to the Id.counsel for the assessee the issue in dispute is squarely covered by the order of the ITAT and in order to maintain

judicial discipline and consistency no other view ought to be taken by the Tribunal. He has placed on record copies of the Tribunal's order passed in the case of Shri Savitaben S. Patel and Shri Paurav Somabhai Patel.

7. On the other hand, the Id.DR contended that vendees have accepted payment of on-money. They have accounted it in their returns of income and have paid taxes. The fact has been unearthed against the assesseees. They have accepted on-money. In such situation, they cannot be absolved from the payment of taxes merely under the garb of procedural lapses that no cross-examination was given or otherwise. The Id.CIT(A) has observed that statement of Rohit Modi was supplied to them and it is an undisputed fact. With regard to the cases of Shri Haribhai Patel, Shri Rajnikant Patel and Shri Upendrakumar G. Patel, he relied upon the assessment orders as well as orders of the Id.CIT(A) in the case of Shri Shantilal R. Patel.

8. The Id.counsel for the assessee while defending the orders of the Id.CIT(A) in the case of Shri Rajnikant Patel, Shri Haribhai Patel and Shri Upendrakumar G. Patel contended that search in the case of Shri Rajnikant Patel was also carried out on 23.5.2008. Neither any asset nor any documents of unexplained nature was found. The search at the premises of the vendee was taken place one month back than the search in the case of Shri Rajnikant Patel. He further contended that no cross-examination has been offered in the cases of Shri Rajnikant Patel. However, in the case of Shri Upendrakumar G. Patel and Shri Haribhai Patel cross-examination of Rohit Modi was provided. In the cross-examination, he disclosed that he has not materialized the deal.

It was materialized by his uncle Shri Dashrath Patni. He was not actually aware that on-money was paid, and if paid, to whom it was paid. He has accepted payment of on-money in his return, because of the working done by his uncle Shri Dashrath Patni. The Id.counsel submitted that this disclosure helped him in his assessment that would absolve him from penalty as well as reconcile the fund-flow statement, when compared with sales. This land has been immediately sold by these vendees. The Id.counsel for the assessee further relied upon the order of the Id.CIT(A) and pointed out that written submissions were filed before the Id.CIT(A) running into more than 13 pages. These have been reproduced by the Id.CIT(A) in the case of Shri Rajnikant Patel.

9. We have duly considered rival contentions and gone through the record carefully. Solitary question for our adjudication is, whether department is possessing sufficient evidences to demonstrate that assessees have received on-money in cash over and above the one stated in the sale deed, and they deserve to be assessed for capital gain on that cash component? A perusal of the record would show that only evidence possessed by the Revenue is recovery of some loose papers inventorised as Annexure A/1/14, page nos.48 to 55 and annexure A-1/16 page 82 to 85, coupled with the statement of Shri Rohit Modi. These documents were found at the premises of Shri Dashrath Patni and statement of Shri Rohit Modi was recorded during the course of search conducted at his premises. The question is, what is evidentiary value of these evidences in the assessment proceedings of the vendors. After an analysis of various developments, the assessees have summarized important facts,

which emerged out from the statement of Shri Rohit Modi as well as the evidences collected during the course of search. We deem it pertinent to take note of these facts. They read as under:

"(i) Rohit Modi has no knowledge of the above land transaction as the same was handled by his uncle Shri Dashrathbhai Patni who had expired on 03.11.2011,

(ii) . The agricultural land purchased by Rohit Modi from the appellant and other co-owners was sold to Aryaman Co-Op. Hou. Society after converting the said land it into Non-Agricultural Land.

(iii) The agricultural land was purchased from us on 09.01.2006 and after converting it into Non-Agricultural land the same was sold to Aryaman Co-Op. Housing Society on 01/06/2006 that is after nearly six months.

(iv) The jantri rate for agricultural land of shilaj village for January 2006 is much less than that for Non-Agricultural land. Then how it is possible that there is marginal difference in purchase price and sale price as mentioned in the loose paper.

(v) The purchaser of land is Rohit Prahladbhai Modi (20%) and Smt Pareshaben Kamlesh Modi (80%), The loose papers seized from Dashrathbhai Patni as per Annexure-A-14 Page Nos. 51 and 55 show distribution between "RP" (30%) and "KM" (70%). It may not be out of place to mention here that "KM" is K. Mehta who is not connected with Modi family. This means 30% share in "RP" includes Rohit Modi, Kamlesh Modi and family of Dashrathbhai Patni.

(vi) Since the accounts are between two groups i.e. Modi Group and K.Mehta Group it is quite likely that Dashrathbhai may have increased the purchase cost so that they have to pay relatively less amount to K.Mehta Group as the share of KM is 70%.

(vii) Shri Rohit Modi could not file any evidence for alleged on-money payments made to the appellant and other co-owners. According to him the only evidence is that he has

disclosed Rs.10,35,46,000 under Explanation 5A ofsec.271(1)(c) of the Act.

(viii) Without prejudice to the above if the purchase price of Rs. 11,35,46,000 is considered for Topavan farm admeasuring 43,302 Sq. Mts then the price of agricultural land would be Rs 2,622 per Sq. Ml or Rs. 2192 per Sq. Yd.

(ix) Without prejudice to the above it seems that Page No 51 and 55 could be the prices of non-agricultural land and not agricultural land because if Rs, 11,35,46,000 is considered as price of agricultural land as considered by the assessing officer in the assessment order and Rs. 12,25,51,000 as sale price of said land after converting it in to non-agricultural use then where are the expenses for converting it into non-agricultural debited and why they are not appearing in the said jottings when there are jottings of other expenses like Dalali IT. Expenses etc. This clearly shows that the internal accounts have been adjusted by the Modi Group to pay less to the K. Mehta Group.

Considering the above submission and the arguments that shall be advanced during the course of hearing of this appeal, the appellant requests that the appeal be allowed in full for which act of kindness the appellant as is duty bound shall remain grateful."

10. We also deem it appropriate to take cognizance of the following points summarized by the assessee before the Id.CIT(A).

"The following facts emerge from the above papers:

(i) On 09.012006 Agricultural Land admeasuring 24686 Sq. Mts (Block No. 482) and 18616 Sq.Mts (Bock No. 742) was sold by appellant along with other co-owners to Rohitbhai Prahladbhai Modi and Pareshaben Kamlesh Modi for Rs. 1,00,00,000.

(ii) On 09.01.2006 there is a registered banakhat (without possession) between Pareshben Kamteshbhai Modi and Rohitbhai Prahladbhai Modi for sate of agricultural land admeasuring 24686 Sq. Mts. (Block No. 482) and 18616 Sq.

Mts. (Block No. 742) with The Sandesh United. The banakhat amount is not mentioned in the search report

(ii) On 01.06.2006 there is a registered sate deed for Rs.4,41,58,352 for safe of non-agricultural land of block no 482 (admeasuring 24686 Sq.Mts.) and block no. 742 (admeasuring 18616 Sq. Mts.) entered into by Pareshaben Kamieshbhai Modi and Rohitbhai Prahladbhai Modi as first part, The Sandesh Limited as second part and Saumya Construction Pvt Ltd as third part The said land is sold to Aryaman Co. Op. Hous. Society Ltd.

This dearly shows that Paresha Kamlesh Modi, Rohitbhai Prahladbhai Modi and The Sandesh United must have sold prior to 01.06.2006 this land to Saumya Construction Pvt Ltd and that is why Saumya Construction Pvt Ltd. appears as third party in the said sale deed.

Moreover if these papers along with the Cross examination and re-examination statement of Shri Rohit Modi before the Income-tax Officer, Ward-6(2), Ahmedabad are read together then it can be 'established that Rohit Modi has rightly admitted that these loose paper seized from the premises of Dashrathbhai Patni (uncle of Rohit Modi) was written much later than 09.012006 as they contain jottings for sate of the land under consideration. For the sake of convenience the same is reproduced hereunder.

Ques: What did you do with the above land at Shilaj?

Ans: 6 We had sold the said land to another person namely Aryaman Co-Op. Housing Society on 01/06/2006 as N.A. land.

Ques: 7 Please go through the seized documents Anne. A/14 and A/15 and tell whether these were prepared much after the date of the sale of the above land i.e. 01.06.2006.

These papers were prepared after 01.06.2006.

Ques: 8 It is fact that these papers were prepared for your internal adjustment or working out profit from few transactions?

Ans:8 I cannot say in this connection, because these were not in my hand writing.

This clearly establishes that Rohit Modi has not given actual facts relating to the sale of land bearing block No. 482 and 742 It is not that the land has been sold directly to Arysman Co-Op. Hou. Sec. Ltd but it was first sold to The Sandesh Lfct (hereafter to Saumya Construction Pvt Ltd and ultimately to Aryaman Co-Op. Hou. Soc. Ltd. Thus this land which was agricultural land was converted into non-agricultural land and then it changed hands. The number of times It changes hands (he purchase price would increase. This is evident from the fact that Saumya Construction Company Pvt Ltd also appears as third party before the sale is affected to Aryaman Co-Op. Housing Society Ltd. Since it is admitted by Rohit Modi that the loose papers Annexure-A/1 Page 51 and 55 are prepared much alter 01.06.2006 and since it does not contain any jotting of any type of expenditure relating to conversion of agricultural land into non-agricultural clearly establishes that the jottings are prepared when the land was converted into non-agricultural land and the purchase price mentioned is that of non-agricultural land."

11. The Tribunal in the case of one of the co-owners has recorded a finding that since no cross-examination was granted, therefore, the statement deserved to be excluded from the evidence required to be read in that cases. The situation in the case of Shri Rajnikant Patel and Shri Shri Shantilal R. Patel is identical. No cross-examination has been granted. Therefore, we deem it appropriate to take note of Tribunal's order which is in identical circumstances. This read as under:

"5. We now come to the lower appellate order passed in assessee's appeal. The CIT(A) deals with all the relevant aspects of the case. He first of all comes to search statement of Shri Rohitbhai Modi to observe that the Assessing Officer never allowed the assessee to cross examine this deponent despite specific request. He finds that not even a copy of the above search statement was furnished to the assessee which vitiates

the entire re-assessment being violative of principles of natural justice. The CIT(A) further observes that neither the assessee had signed the seized material in question nor the same was recovered from her premises. He thereafter himself deals with Shri Modi's search statement and reproduces the same in verbatim in the lower appellate order to opine that even this deponent was not very sure of having paid the impugned on money to the assessee nor is there any supportive evidence since the seized material annexure A is a dumb paper. The CIT(A) concludes in the end that even in any case, the impugned immovable property is in the nature of agricultural land not attracting applicability of capital gains tax being not a capital asset ITA Nos.2151 to 2153/Ahd/2013 (ITO vs. Shri Paurav S. Patel & 2 Ors.) A.Y. 2006-07 -5 u/s.2(14) of the Act. His view is that even if the Revenue's version is accepted, the on money in question would still be exempt from taxation.

6. We have heard both the parties reiterating their respective stands in support and against the impugned on money addition. There is no dispute that the Assessing Officer had neither allowed the assessee to cross examine Shri Rohitbhai Modi (supra) nor did he furnish the said search statement to the assessee. Hon'ble apex court in a recent judgment in case of Andaman Timber Industries in Civil Appeal No.4228 of 2006 deals with an identical violation of the principles of natural justice to quash the said assessment in question for this sole reason. We deem it appropriate to reproduce the relevant observation therein as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with

by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal."

7. Ld. Departmental Representative fails to point any exception therein in facts or law. We thus hold that impugned re-assessments are liable to be quashed. Ld. Departmental Representative is further unable to dispute correctness of the above lower appellate findings on merits as well. We thus see no reason to interfere in the well reasoned lower appellate

order under challenge. Revenue's lead appeal ITA No.2152/Ahd/2013 fails.

8. Same order in Revenue's other two appeals ITA Nos.2151 & 2153/Ahd/2013.

9. These three Revenue's appeals are accordingly dismissed."

12. In the light of the above material, if we examine the facts carefully, then it would reveal that Shri Rohit Modi was not sure, whether money actually paid or not to the vendors. In the cross-examination, he has expressed his inability in a way. He admitted that deal was finalized by his uncle Shri Dashrath Patni who has already expired. Thus, in the shape of statement, there is no conclusive evidence possessed by the Revenue. As far as the documents found during the course of search are concerned, these documents were rough jottings noted by Shri Dasrath Patni and not by Rohit Modi. It has also disclosed that these jottings have been made after the deal. Now what was the circumstances for making such jottings, have been pointed out by the assessee in the reasons summarized in the order of the Id.CIT(A) and extracted by us. We find that in the case of Shri Rajnikant Patel, the Id.CIT(A) made an analysis of this evidence, and thereafter recorded a finding that sufficient evidence was not available with the Revenue. We deem it pertinent to take note of this finding, which reads as under:

'5. Decision:

I have gone through the submissions made by the appellant and the paper book filed before me. As I understand there are two different documents which have been relied by the AO to finalise the assessment u/s. 143(3) r.w.s. 148 of the I. T. Act, 1961, One is seized document i.e. loose paper Page No. 51 of Annexure A-1 wherefrom impugned figure of addition is percolating. The related entry being referred in this very page can be read as under:

		30%	70
		RP	KM
Makarba Haveli Topavan			
Purchase	1135.46	340.64	794.82
Paid by	<u>381.50</u>		<u>753.96</u>
	(+) 40.86 -		40.86
Sale	1225.51	367.65	857.86
		<u>430.00</u>	<u>795.51</u>
		(-) 62.35	(+) 62.35

The other seized document which is relied upon by the AO is loose paper Page No.55 of Annexure A-1 wherefrom impugned figure of addition is percolating. The related entry being referred in this very page can be read as under:

		RP	PD
Makarba Have// Topavan			
Purchase	1135.46	381.50	127.15 -
Paid by		<u>356.50</u>	254.35
		(+) 229.35	<u>25.00</u>
Sale	1225.51	430.00	(-) 229.35
		143.33	286.67
Rececd by		<u>417.00</u>	<u>13.00</u>
		(-) 273.67	(+) 273.67

Nothing much with certainty can be inferred from the above documents as the same is neither signed by the appellant nor seized from their premises. This document is related to seizure during the action u/s 132 in. case of Himalaya Group. To decipher and decode above jottings on Page no. 51 and 55 a statement of Rohit Modi is recorded on 16.01.2014 by Income-tax officer, Ward-6(2), Ahmedabad in the case of Haribhai M. Patel and Upendra G. Patel HUF (co-owner of the land). Again Shri Rohit Modi was examined on 07.03.2014 by the Dy. Commissioner of Income-tax, Circle-6, Ahmedabad in the case of the appellant and on the same day he was cross examined and re-examined by the Income-tax Officer, Ward-6(2), Ahmedabad in the case of Shri Haribhai M, Patel and Shri Upendra G. Patel HUF. All these statements are made a part of the paper book.

As can be seen above Shri Rohit Modi is not sure that money was actually paid or not to the appellant as the transactions was handled by Shri Dashrathbhai Bhaichanddas Patni (Modi) who has expired on 03/11 /2011. As one can see in statement that it is not specific as to who negotiated the deal on or behalf of appellant. Shri Rohitbhai Modi in his statement could not file any evidences for such "on money" payment even when specifically asked by the AO. In view of such facts, I conclude that Annexure A is a dumb paper so far as appellant is concerned. It was not found in possession of appellant and the assessment under question is not completed u/s. 153C of the I. T. Act, 1961. The addition so made is without concrete evidence and no sustainable addition can be made by the A.O. without bringing on record positive evidence supporting the sale

consideration received by the over and above the amount mentioned in the sale deed dated 09/01/2006.

The AO did not conduct any independent enquiry to prove that the price in the sale deed executed by the appellant was understated and no evidence except the two loose papers and statement of Shri Rohit Modi have been relied upon to make the addition. Even the statement of Shri Rohit Modi is not of much significance as he has admitted that the seized papers on the bases of which the addition is made are not in his hand writing and has no knowledge of the deal of purchase of Tapovan land.

In view of these facts, it is decided that addition of STCG of Rs.1,72,51,449/-by the AO is not based on credible and corroborative evidences. Therefore, the addition is ordered to be deleted.”

13. At this stage, we would like to observe that we have carefully gone through the orders of the Id.CIT(A) passed in the case of Shri Shantilal R. Patel. A perusal of that order would indicate that Id.CIT(A) has failed to appreciate the basic principle of appreciation of evidence. She took statement of Shri Rohit Modi as a gospel truth and observed that it is an undisputed fact that on-money was paid. It may be an undisputed fact for Shri Rohit Modi in his case, but in the case of vendor this is a disputed fact. If somebody wants to pay tax voluntarily, then there could not be any dispute. The dispute would arise when liability has been fastened on other. Documents were not in the hand-writing of Shri Rohit Modi. In spite of that she observed that clinching evidence was found against the assessee. According to her, Shri Rohit Modi has owned up pages. He might have owned up in his assessment proceedings, but they were not in his hand writing nor it was found in his premises. Similarly, she failed to note that land sold by the assessee was agriculture land. It was converted into non-agriculture and thereafter sold. The rates for non-agriculture land would be altogether different. The observation of the Id.CIT(A) that current purchase/sale price prevalent at that

time clearly makes inference in the shape of payment of on-money. It is pertinent to note that had the assessee sold the land below the current price notified for the purpose of charging stamp duty, then the addition in the regular assessment would have been made under section 50C of the Act. The AO has not invoked section 50C. Thus, to our mind, the Id.CIT(A) in the case of Shri Shantilal R. Patel failed to appreciate the nature of evidence available against the vendors. In view of the above discussion and respectfully following order of the ITAT in the case of one of the co-owners, we are of the view that no capital gain deserves to be assessed in the hands of the vendors on account of receipt of on-money in their hands. In other words, capital gain ought not to be computed on the basis of alleged receipt of cash components amounting to Rs.10,35,46,000/-. The Id.CIT(A) has rightly deleted it in the case of Shri Rajnikant K. Patel Shri Upendrakumar G. Patel and Shri Haribhai Patel. In the case of Shantilal R. Patel, we allow appeal and delete the addition. Thus, all the appeals of the Revenue are dismissed and that the assessee is allowed.

14. In the result, all the appeals of the Revenue are dismissed, and that of the assessee is allowed.

Order pronounced in the Court on 21st February, 2019.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 21/02/2019