

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 156/RJT/2016  
(Assessment Year: 2007-08)**

<b>Income-tax Officer, Ward-5, Mundra-Kutch</b>	<b>V/S</b>	<b>Shri Kotak Mayur Arvindbhai Prop: M/s. Mayur Trading Co., Main Bazar, Mundra-Kutch</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AEMPK 1558F**

**Appellant by : Shri Praveen Verma, Sr. D.R.**  
**Respondent by : Shri Mehul J. Ranpura**

**(आदेश)/ORDER**

Date of hearing : 27 -02-2019  
Date of Pronouncement : 10 -04-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-2, Rajkot dated 12.02.2016 pertaining to A.Y. 2007-08 and following grounds have been taken:

- 1) *The Ld. CIT(A) has erred in law and on facts deleted addition made by the AO to the tune of Rs.1,09,51,000/- on account of undisclosed income.*
  - 2) *The Id CIT(A) has erred in law and on facts that not considering impounded cash books entries as evidence for cash received by assessee.*
  - 3) *On the facts and circumstances of the case Ld CIT(A) ought to have upheld the order of the AO.*
  - 4) *It is therefore, prayed that the order of the Ld CIT(A) may be set-aside and that of the Assessing Officer be restored to the above extent.*
2. Briefly stated the facts of the case are that the appellant is an individual deriving income from business as partner in the firm of M/s. Mayur Trading Company at Mundra. During the year, he also derived income from short term capital gain and small income from interest. Return of income for the year under appeal was filed on 31.03.2008 declaring total income at Rs. 1,04,780/-.
3. On 29-10-2010 survey under section 133A was carried at the business premise of one M/s Kashish Enterprise at Bhuj. During the survey, it was found that M/s Kashish Enterprise had carried project for construction of commercial complex at Mundra. It was also found from the impounded material that they have paid 'on money' of Rs 1,09,51,000/- to the appellant against purchase of plot at Mundra. Based on this material, ITO, Ward 1, Bhuj initiated proceedings for reopening of assessment and issued notice under section 148 to the appellant.
4. On receipt of the notice, appellant vide application dated 23-08-2011 objected to the proceedings for reopening of the completed assessment on the ground that sale consideration received by the appellant was Rs 2,25,000/- only and

not as found during the survey. And in support of its contention, appellant filed copy of the registered sale deed with the ITO.

5. During the course of assessment proceedings, appellant requested to examine the person whose statement was recorded by the Department as also other witnesses. Appellant also challenged the genuineness and correctness of the so called cash book and submitted that the same was not maintained during the day to day course of business. Various defects in the said so called cash book was also pointed- It was also brought to the notice that items of expenditure incurred in the month of December 2006 were recorded after the entries of January, 2007. It was also pointed that various cash expenditure incurred by them for registration of deed were also not found recorded in the so called cash book. Even while furnishing original return of income Kshish Enterprise have not taken into consideration the entries appearing in the impounded material. It was also submitted that after the survey action Kashish enterprise produced this so called cash book to get the benefit by way of escalating the project cost and reducing the income. Objections and submissions of the appellant were not considered and AO framed the assessment under section 143(3) r.w.s. 147 of the Act determining the total income of the appellant at Rs. 1,10,55,780/- as against returned income of Rs. 1,04,780/-.
6. Against the said addition, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.
7. Now by way of second appeal, assessee/ appellant has come before us.

8. We have gone through the relevant record and impugned order. In this case, Mayur Aravindbhai Kotak, Mundra is an individual and filed its return on 31.03.2008 declaring total income at Rs. 1,04,780/- and same was earned from Short Term capital gain , bank interest and personal business income and remuneration from partnership firm.
9. On 29.10.2010 survey was carried at the business premises of M/s Kashish Enterprise from where it was found from the material that Kashish Enterprise have paid on money of Rs. 1,09,51,000/- to the appellant against the purchase of plot at Mundra.
10. In reply, assessee stated that assessee received 2,25,000/- only and copy of registered sale deed also produced as evidence.
11. Now question before us is whether on the basis of survey, if some material is found containing details pertaining to payment made to other persons are treated to be income of the other persons or the income of the payee. In this case, certain loose papers were found wherein it is alleged that a payment of Rs. 1,09,51,000/- was made to the appellant but apart from that no corroborative evidence was found.
12. During the course of re-assessment proceedings, assessee/appellant asked the Assessing Officer by way of letter dated 11.11.2011 that he should be allowed to examine/cross examine the person whose names are found from the impounded material and those have claimed to have played active role in the alleged transfer of money to the assessee and same letter is part of paper book as page no. 270 but no opportunity was given to the appellant.

13. In support of its contention, ld. A.R. cited a judgment of Hon'ble Jurisdictional High Court in the matter of CIT vs. Maulikkumar K. Shah (2008) 307 ITR 137 wherein it is held that loose paper without any supporting evidence does not have any evidentiary value and such paper would be merely presumption based on surmises.

14. Ld. A.R. also cited a judgment of Hon'ble High Court in the case of CBI vs. V.C. Shukla & Ors. wherein it is held that "*we are, therefore, of the considered opinion that the Revenue would not be justified in resting its case on the loose papers and documents found from the residence of a third party even if such documents contain narrations of transactions with the assessee-company. At this stage, we may also refer to the provisions of Section 132(4A). The presumption under the provisions of Section 132(4A) would in any case not be applicable to a third party from whose possession such papers and documents have not been found by the Revenue*".

15. As observed above, no cross-examination of the person whose statement was recorded during the survey proceedings was allowed by the A.O. and papers recovered from the third party and in the absence of any corroborative evidence, addition in the hands of assessee cannot be made. Thus, we would like to dismiss the appeal of the Revenue.

16. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 10 - 04- 2019

Sd/-

Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 10/04/2019

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**