

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
 SURAT BENCH, SURAT**  
**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
 AND SHRI O. P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1781/AHD/2016  
 निर्धारण वर्ष/**Assessment Year: 2011-12**

Smt. Nitaben Devrajbhai Patel, 606, Lalbhai Contractor Complex, Opp. Parsi Library, Nanpura, Majura Gate, Surat. <b>[PAN: AAZPP 0166 H]</b>	V.	Assistant Commissioner of Income Tax, Central Circle-2, Surat.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारिती की ओर से <b>Assessee by</b>	Shri Rasesh Shah, CA
राजस्व की ओर से <b>Revenue by</b>	Shri S. T. Bidari, CIT(DR)
सुनवाई की तारीख <b>Date of hearing</b>	26.07.2019
उद्घोषणा की तारीख <b>Date of pronouncement</b>	27.08.2019

**आदेश /ORDER**

**PER O. P. MEENA, AM**

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-4, Surat (in short “the CIT (A)”) dated 05.05.2016 pertaining to Assessment Year 2011-12, which in turn has arisen from the assessment order passed under section 143 (3) read with section 153A dated 30.03.2014 of Income Tax Act, 1961 (in short ‘the Act’) by the Deputy Commissioner of Income-Tax, Central Circle – 2, Surat (in short “the AO”).

**2.** Ground No. 1 to 3 are against order of CIT (A) for confirming the addition of Rs.3,78,72,844/- being 32.50% share of the assessee made by the AO as undisclosed Long-Term Capital Gain as sale consideration received in cash on sale of land on the basis of alleged sauda chitti found and seized from the bank locker of third party viz Shri Kirit M Shah without appreciating the facts of the case.

**3.** Succinctly, facts as culled out from the orders of lower authorities are that the assessee is a Partner in various firms and is receiving interest income and share of profit from the said firms. The assessee along with other co-owners have sold one immovable property for the total consideration of Rs.4,52,60,000/- wherein the assessee has received an amount of Rs.1,47,09,500/- for her share of 32.50% on which long-term capital gain has been shown by the assessee in the return of income filed as per provisions of law. A search under section 132 of the Act was carried out on 18.10.2011 in the Group of Sangini builders. The Sangini Group has made disclosure of Rs. 15 crores and paid taxes accordingly. Thereafter, a notice under section 153A was issued on 26.03.2012 and served upon the assessee. In response to the said notice, the assessee furnished the return of income on 26.12.2012 declaring total income at Rs.46,48,970/-. A search was also carried out in the

case of Muniraj Group of Surat on 18.10.2011, wherein during search carried on in respect of bank locker No. 262 of Dena Bank, held by Shri Kiritbhai M Shah, one piece of paper was found & seized as per Annexure-A, which was a satakhat/saudachittihi in respect of land located at Block No.350, T.P.No.140 at Village, Pal, entered in to between Shri Ravjibhai P Patel and Shri Veljibhai M Sheta being sellers of land and Shri Mukeshbhai A Morakhiya and Shri Kiritbhai M Shah being the purchasers of land. M/s. Munisuvrat Corporation of Muniraj sub-group was developing that land. On verification of said satakhat/saudachittihi with the registered sale deed, it was found that the final document price declared before the stamp authorities was at Rs.4,52,62,000/- as against sale consideration worked out based on the rate mentioned in the satakhat/saudachittihi found from bank locker. Further it was observed that documented sellers of the said land were Smt. Nitaben Devrajibhai Sheta (Patel) (the assessee), Premjibhai Gopalbhai Patel HUF, Shri Mansukhbhai Diyalbhai and Shri Dhanjibhai Patel, who are either the family members or business partners of Shri Ravjibhai P Patel / Shri Veljibhai M Sheta. On verifying the said satakhat/saudachittihi vis-à-vis sale deed (dastavej), the document price as declared before Stamp Duty Authorities was only Rs.4,52,60,000/- as against actual sale consideration of Rs.16,17,91,847/-. Therefore, the AO was of the

view that the sellers have derived unaccounted income of Rs.11,65,31,847/- from sale of this land. Therefore, Shri Mukeshbhai Morkhiya was confronted with the evidence under section 131 on 31.01.2011, but this time he resorted cooked up excuses. The AO has discussed the chronology of events related to land at Page No.8 to 10 of the assessment order, and issued a show cause letter dated 18. 03. 2014, contents of which are reproduced at Page No. 11 to 13 of the assessment order. The assessee has filed his reply vide letter dated 21.03.2014. The AO has discussed the reply of the assessee and rebuttable by the AO from page Nos. 13 to 33 of the assessment order. After discussing the same, the AO has come to the conclusion, which can be summarized as that if the satakhat/saudachittihi was cancelled; there was no reason with Shri Mukesh Morkhiya to preserve the said document in a bank locker of Shri Kirit M Shah, who is also signatory of said document. The satakhat/saudachittihi, which is signed by the four persons and two witnesses, can be said to have cancel it orally is not acceptable. Hence, the stories are fabricated. The documents dated 29.12.2009, also signifies that there was an implied consent of the real owners i.e. Shri Premjibhai Gopalbhai, HUF, Nitaben Devjibhai Pate, Shri Mansukhbhai Dayalbhai Patel and Shri Dhanjibhai Patel, through which Shri Ravjibhai P Patel and Shri Veljibhai M Sheta can take all the required actions on their behalf. The

contention that the real purchaser as per registered sale deed is M/s. Munisuvrat Corporation, hence, saudachittihi is not valid as it is signed by Mukesh Morkhiya and Shri Kirit M Shah. However, the AO was of the view that Shri Kirit M Shah was acting as developer of the project and was fully involved. Further, Shri Mukesh Morkhiya and Shri Kirit M Shah were not the farmer hence, they could not purchase the land from farmers was within their knowledge. As per saudachittihi last installment was to be paid by last December 2010 and exactly the last installment was paid on 03.01 2011 and registration was done on same date. In view of this and reasons as discussed by the AO in assessment order, he concluded that satakhat/saudachittihi found from locker is true document in respect of land admeasuring 4526 sq. meter on total sale consideration of Rs.11,65,31,847 was received by the sellers of land in which share of the assessee was @31.5% comes to Rs.3,78,72,844/-. Accordingly, same was treated as long-term capital gain in her hand and added to total income.

**4.** Being, aggrieved, the assessee filed an appeal before the Ld.CIT(A). It was contended that impugned document dated 29. 12. 2009 was not Satakhat, but was only offer to sell the land. It was contended that the sellers as per document were not legal owners, no advance/token money has been paid and it was a failed attempt

by the two persons, namely Shri Ravjibhai P Patel and Shri Veljibhai M Sheta to act as middlemen and to keep major share with themselves. It was claimed that purchaser parties have realized with seven or ten days that two persons are not real owners, hence, they have cancelled the said Satakhat. One of the original signatory of sauda chitti namely Shri Mukesh A Morkhiya, had entered in to a partnership with Ms. Purvi Jagdish Vasania to form a partnership firm named as M/s. Munisuvrat Corporation in February 2010. This firm subsequently entered in to fresh negotiation with the legal owners and signed Satakhat on 25.02.2010 and only this was acted upon. Shri Kirit M Shah has no locus standi as M/s. Munisuvrat Corporation, is the ultimate purchaser of the land. The assessee has also relied in the case of CIT v. Fairdeal Textile Park Pvt. Ltd. [2014] 362 ITR 497 (Gujarat). However, the CIT (A) observed that document dated 26.12.2009 has been acted upon. According to Shri Mukesh A Morkhiya, who is signatory as purchaser, who is majority partner of M/s. Munisuvrat Corporation, by implication admitted transaction having been done. The CIT (A) also agreed with the AO that Shri Ravjibhai P Patel and Shri Veljibhai M Sheta in fact carried all the authority from the seller's / legal owners to enter in to deal on their behalf. The rate mentioned on satakhat/saudachittihi was in odd figures and exact date of payment were written. Therefore, the

appellant's claim that the Satakhat was rejected/ cancelled and new Satakhat was signed on 25.02.2010 is not correct. The ld.CIT(A) also distinguished the decision in the case of CIT v. Fairdeal Textile Park (P) Ltd. [2014] 362 ITR 497 (Gujarat) / 43 taxmann.com 393 (Gujarat) as unlike in that case where Satakhat was held entered in to by third party independently and unrelated to actual owners whereas in the present case, signatories were acting on authority and on behalf of the owners. In view of these facts, the CIT (A) upheld the order of the AO.

**5.** Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that sauda chitti recovered from locker of Shri Kirit M Shah is dated 26.12.2009, which was an understanding between two alleged sellers and two alleged purchasers, who were not actual owners of land nor representing the actual purchaser of land i.e. firm M/s. Munisuvrat Corporation. It was submitted that M/s. Munisuvrat Corporation came into existence on 18.01.2010 and document for agreement to sale entered in to on 25.02.2010 and sale deed of land was executed on 03.01.2011 between the assessee along with co-owners and partners of M/s. Munisuvrat Corporation. M/s. Munisuvrat Corporation was registered with registrar of firms. The copy of sauda chitti reflected at Page No. 3 of assessment order

shows that name of sellers is given as Shri Ravjibhai P Patel and Shri Veljibhai M Sheta and name of purchaser as Shri Mukesh A Morkhiya and Shri Kirit M Shah. The learned counsel for the assessee argued that actual sellers of said land were altogether different and the land in question was sold by the Appellant vide sale deed executed on 03.01.2011 at a sale consideration of Rs.4,52,60,000. The real sellers as per government records are Shri Premjibhai G. Patel HUF, Smt. Nitaben Devrajibhai Patel, Shri Mansukhbhai D Patel and Shri Dhanjibhai D Patel and purchasers are M/s. Munisuvrat Corporation (partners namely Shri Mukesh A Morkhiya and Ms. Purvi Jagdish Vasania) . It was clearly explained during the course of assessment proceedings that said sauda chitti was not related to the assessee and it was understanding between the different persons mentioned in the said sauda chitti for the deal of land. However, after a few days, the intended purchasers came to know about the facts that person mentioned in the said sauda chitti were not actual owners of the land and price quoted by so-called sellers was exorbitantly high as compared to prevailing market rate. Therefore, the said deal was cancelled. The learned counsel relied in the case of CIT v. Fairdeal Textile Park (P)Ltd. [2014] 362 ITR 497 (Gujarat) / 43 taxmann.com 393 (Gujarat) wherein it was held that no addition could be made only on the basis of agreement to sell found in search, which were not at all

implemented. Therefore, after a long gap of time, an agreement to sale was entered in to on 25.02.2010 between actual sellers and purchasers for part of land bearing Block No. 350 Plot No. 86 at village, Pal. However, as per sale deed, the assessee with co-owners have sold entire land vide sale deed executed on 03.01.2011. Therefore, it was contended that the sauda chitti is a dump paper and it was not belonged to the assessee. Further, the perusal of satakhat/saudachittihi would show that there was no financial transaction mentioned, therefore, there was no case for the AO to presume that the assessee has received an amount of Rs.3,78,72,844/-. There cannot be even presumption that Shri Ravjibhai P Patel and Shri Veljibhai M Sheta have received any payment on behalf of the assessee or actual owners. The AO could not find any evidence to lead that either Shri Ravjibhai P Patel and Shri Veljibhai M Sheta or Shri Mukesh A Morkhiya or Shri Kirit M Shah have any authority to make the deal of impugned land. Therefore, the AO has acted purely on the basis of presumption and guesswork, and erroneously assumed that the assessee has received the on-money as per schedule mentioned in satakhat/saudachittihi. Further, Shri Kirit M Shah had categorically denied vide reply no. 2 of his statement recorded on 31.01.2012 that he made a deal along with Shri Mukesh A Morkhiya for purchase of impugned land on 26.12.2009. Shri

Mukesh A Morkhiya also denied in his reply to question no. 3 of statement recorded under section 131 of the Act, dated 31.01.2012 that the deal was cancelled. The Ld.AO has simply observed that Shri Ravjibhai P Patel has given evasive reply, whereas in the reply to question no.13 of his statement dated 25.01.2012, he has categorically stated that he is not the legal owner of the impugned land the purchase the said land from legal owners, but deal was not materialized. The learned counsel for the assessee submitted that the AO has conveniently ignored that statement of Shri Valjibhai M Sheta recorded on 24.01.2012 wherein in reply to Question no. 9, he had also categorically stated that the deal mentioned on the said 'saudachitti' was cancelled within 8 to 10 days. In support of this contention, Learned Counsel relied in the case of Pr. CIT, Central, Ahmedabad v. Ajay Surendrabhai Patel [2016] 69 taxmann.com 309 (Gujarat) of which head notes reads as "In case of search carried out at premises of 'S', certain documents were seized - On basis of seized documents, Assessing Officer opined that assessee had paid certain amount over and above amount specified in agreement to sell which represented unexplained investment - Tribunal found that assessee was not a party to seized agreement of sale which was basis of making entire addition - Moreover, revenue could not bring any material on record to show that assessee paid actually any amount more than amount

stated in registered deed of sale - Revenue even failed to establish any link between assessee and 'V', through whom money was allegedly paid to sellers of plots - Tribunal thus deleted addition made by Assessing Officer - Whether findings recorded by Tribunal being findings of fact, same did not require any interference - Held, yes [Paras 12 and 14] [In favour of assessee]”.

**6.** The learned counsel for the assessee further submitted that during the course of assessment proceedings, the assessee has filed affidavit from witness mentioned in the alleged documents seized in which the said witness clearly stated that they had knowledge and information about the cancellation of 'saudachitti' and accordingly, they made a responsible statement before the AO and therefore, there was no ground for the AO to reject the same without examining them. In support of this view the learned counsel for the assessee relied in the case of *Silk Museum v. CIT 257 ITR 22 (Gujarat)* wherein it was held that affidavit is a piece of evidence which along with other material on record has to be taken into consideration before arriving at a finding. A statement of deponent can be held to be unreliable either on the basis of cross examination of the deponent or by reference to other material on record. Similar view has been taken in the case of *Gunwantibai Ratilal v. CIT 146 ITR 140 (MP)*. The Hon'ble Supreme Court in

case of Mehta Parikh & Co. 30 ITR 181 (SC) that the affidavit is valid document, unless it is cross examined.

**7.** The learned counsel for the assessee further submitted that the statement of the assessee was never recorded on the alleged seized paper either during investigation proceeding or assessment proceedings. Further, the assessment order was passed under section 143(3) read with section 153A in the case of Shri Ravjibhai P Patel and Shri Veljibhai M Sheta for A.Y. 2011-12 whose names are mentioned as alleged seller in seized 'saudachitti' and no adverse inference has been drawn in their cases. The AO and CIT (A) has relied on statement of Shri Kirit M Shah and Shri Mukesh A Morkhiya recorded on 08.11.2011 at the time of finding the document but they have not admitted any payment of on-money in their statement. Further, in the statement recorded on 31.01.2012, they have stated that deal was cancelled. If the AO wanted to rely on their statement dated 08.11.2011, he should have provided opportunity of cross-examination to the assessee. Learned Counsel has relied in the case of Andaman Timber Industries v. Commissioner of Central Excise Kolkata-II [2015] 13 STD 805 (SC) [2015] 281 CTR 241 (SC) wherein it was held that not allowing the assessee to cross examine witnesses by Adjudicating Authority though statements of those witnesses were made basis of impugned

order, amounted to serious flaw which makes impugned order nullity as it amounted to violation of principle of natural justice.

**8.** The learned counsel for the assessee placed reliance in the case of Vinodbhai Shamjibhai Ravani v. DCIT Central Circle [2017] 79 taxmann.com 237 (Gujarat): [2017] 393 ITR 491 (Gujarat) wherein it was laid down that where there was no tangible material available on record to form a reasonable belief that amount of sale consideration on sale of land owned by third party was received by assessee in cash, merely on basis of sauda chitthi signed by assessee for sale of such land, it could not be said that sale consideration was received by assessee. The above decision was affirmed by the Hon`ble Supreme Court in the case of DCIT v. Alpesh Gokulbhai Kotadia [2018] 95 taxmann.com 108 (SC) in which it was observed that “Where there was no tangible material available on record to form a reasonable belief that amount of sale consideration had been received by assessee in cash, merely on basis of sauda-chitthi signed by assessee for sale of such land, it could not be said that sale consideration was received by assessee. The SLP filed by the Revenue against decision of Vinodbhai Shamjibhai Ravani v. DCIT Central Circle [2017] 79 taxmann.com 237 (Gujarat): [2017] 393 ITR 491 (Gujarat) was dismissed by the Hon`ble Supreme Court in above decision.

**9.** Thus, in the light of above submissions, the learned counsel for the assessee contended that CIT (A) was not justified in confirming the addition made by the AO, hence, deserve to be deleted.

**10.** *Per contra*, the learned D.R. supported the orders of lower authorities. The learned D.R. further submitted that the impugned land was ultimately sold vide registered sale deed to purchasers. Further, the land description, area, Block No. etc. are matching and rate of purchase is mentioned in odd figure. Hence, the AO was justified in making addition based on such seized material be 'saudachitti' for from bank locker of Shri Kirit M Shah.

**11.** We have heard the rival submissions and perused the relevant material on record. We find that a saudachittihi dated 29.12.2009 in respect of land located at Block No.350, T.P.No.140, Village, Pal entered in to between Shri Ravjibhai P Patel and Shri Vaeljibhai M Sheta being sellers and Shri Mukeshbhai A Morakhiya and Shri Kiritbhai M Shah being the purchaser was found and seized during search on 18.10.2011 from bank locker held by Shri Kirit M Shah. The AO based on rate mentioned in said 'saudachitti' calculated the sale consideration at Rs. 11,65,31,847 in which assessee's share @32.5% was worked out at Rs. 3,78,72,844 and made addition being unaccounted long-term capital gain. The perusal of scanned

copy of 'saudachitti' dated 29.12.2009, appearing at Page No. 3 of assessment order shows the name of sellers as Shri Ravjibhai P Patel and Shri Veljibhai M Sheta and name of purchaser as Shri Mukesh A Morkhiya and Shri Kirit M Shah. However, the sellers of said land are altogether different and the land in question was sold by the assessee along with other three co-owners vide sale deed executed on 03.01.2011 at a sale consideration of Rs.4,52,60,000/- as mentioned in the sale deed. The real sellers as per government records are Shri Premjibhai G. Patel HUF, Smt. Nitaben Devrajibhai Patel, Shri Mansukhbhai D Patel and Shri Dhanjibhai D Patel and purchasers are M/s. Munisuvrat Corporation (partners namely Shri Mukesh A Morkhiya and Ms. Purvi Jagdish Vasania). Therefore, the 'saudachitti' entered in to two alleged sellers and two alleged purchasers, who had not actual owners of land, nor representing the purchaser firm M/s. Munisuvrat Corporation, cannot be considered in the case of the assessee who was not party to 'saudachitti' found and seized. It is also noticed that M/s. Munisuvrat Corporation a partnership firm came into existence on 18.01.2010 whereas saudachitti is dated 29.12.2009. Further, the agreement to sale entered in to on 25.02.2010 and sale deed of land was executed on 03.01.2011 between the assessee along with co-owners and partners of M/s. Munisuvrat Corporation. Therefore, the said saudachitti is dumb paper has no relation with actual sale

of land as the ultimate purchaser firm was not even in existence on the date of so-called 'saudachitti. M/s. Munisuvrat Corporation was registered with registrar of firms. The assessee has claimed that said sauda chitti was not related to the assessee and it was understanding between the different persons mentioned in the said sauda chitti for the deal of land which was cancelled after a few days, when the intended purchasers came to know about the facts that person mentioned in the said sauda chitti were not actual owners of the land and price quoted by so called sellers was exorbitantly high as compared to prevailing market rate. Thereafter, after a long gap of time, an agreement to sale was entered into on 25.02.2010 between actual sellers and purchasers for part of land bearing Block No. 350 Plot No. 86, at village Pal. However, as per sale deed the assessee with co-owners have sold entire land vide sale deed executed on 03.01.2011. Therefore, we are of the considered opinion that the sauda-chitti is a dumb piece of paper and it was not belonged to the assessee nor signed by the assessee and legal owners of the land. The perusal of satakhat/saudachittihi manifest that there was no financial transaction mentioned therein, therefore, there was no case for the AO to presume that the assessee has received an amount of Rs.3,78,72,844/- vide said saudachitti. The AO has not brought on record any evidence that Shri Ravjibhai P Patel and Shri Veljibhai M

Sheta have received any payment on behalf of the assessee or actual legal owners. The AO could not find any evidence to lead that either Shri Ravjibhai P Patel and Shri Veljibhai M Sheta or Shri Mukesh A Morkhiya or Shri Kirit M Shah were acting on behalf of the assessee. Therefore, the AO has acted purely based on presumption and guesswork, and erroneously assumed that the assessee has received the on-money as per schedule stipulated in saudachittihi. Further, Shri Kirit M Shah had categorically stated reply no.2 of his statement recorded on 31.01.2012 that a deal made along with Shri Mukesh A Morkhiya for purchase of impugned land on 26.12.2009. Shri Mukesh A Morkhiya also denied in his reply to question no. 3 of statement recorded under section 131 of the Act, dated 31.01.2012 and stated that the deal was cancelled. The Ld.AO has simply observed that Shri Ravjibhai P Patel has given evasive reply, whereas in the reply to Question No.13 of his statement dated 25.01.2012, he has categorically stated that he is not the legal owner of the impugned land and they intended to purchase the said land from legal owners but deal was not materialized. We observe that Shri Valjibhai M Sheta in his statement recorded on 24.01.2012 in reply to Question no.9, had categorically stated that the deal mentioned on the said 'saudachitti' was cancelled within 7 to 10 days from date of deal. Thus, there was no tangible material with the AO to come a finding

that the assessee has received sale consideration over and above which is recorded the registered sale deed. The Hon'ble Gujarat High Court in the case of Vinodbhai Shamjibhai Ravani v. DCIT Central Circle [2017] 79 taxmann.com 237 (Gujarat): [2017] 393 ITR 491 (Gujarat) laid down that where there was no tangible material available on record to form a reasonable belief that amount of sale consideration on sale of land owned by third party was received by assessee in cash, merely on basis of sauda chitthi signed by assessee for sale of such land, it could not be said that sale consideration was received by assessee. This judgement has been affirmed by the Hon'ble Supreme Court in the case of DCIT v. Alpesh Gokulbhai Kotadia [2018] 95 taxmann.com 108 (SC) by dismissing the SLP of Revenue by observing that where there was no tangible material available on record to form a reasonable belief that amount of sale consideration had been received by assessee in cash, merely on basis of sauda-chitthi signed by assessee for sale of such land, it could not be said that sale consideration was received by assessee; SLP dismissed. Hence, in the light of ratio of above decision the addition made is not justified, hence, deserve to be deleted.

**12.** The assessee has filed an affidavit from witness mentioned in the alleged 'saudachitti' seized in which they have clearly stated

that they had knowledge and information about the cancellation of 'saudachitti' and accordingly, they made a responsible statement before the AO and therefore, there was no ground for the AO to reject the same without examining them. The Hon'ble Gujarat High Court in the case of Silk Museum v. CIT 257 ITR 22 (Gujarat) wherein it was held that affidavit is a piece of evidence which along with other material on record has to be taken into consideration before arriving at a finding. A statement of deponent can be held to be unreliable either on the basis of cross-examination of the deponent or by reference to other material on record. Similar view has been expressed in the case of Gunwantibai Ratilal v. CIT 146 ITR 140 (MP) and it has been by the Hon'ble Supreme Court in case of Mehta Parikh & Co. 30 ITR 181 (SC) that the affidavit valid document, unless it is cross examined.

**13.** It is further noticed that the AO has never examined the assessee nor recorded any statement from the assessee on the alleged seized paper either during investigation proceeding or assessment proceedings. Hence, before making addition the AO should have confronted the assessee with 'saudachitti' seized from a third party. It is also noticed that no adverse inference has been drawn in the case of Shri Ravjibhai P Patel and Shri Veljibhai M Sheta for A.Y. 2011-12 alleged sellers in their assessment passed

under section 143(3) read with section 153A, whose names are mentioned as alleged seller in seized 'saudachitti'. The AO and CIT (A) has relied on statement of Shri Kirit M Shah and Shri Mukesh A Morkhiya recorded on 08.11.2011 at the time of finding of the alleged document, However, we find that they have not admitted any payment of on-money in their statement recorded on 08.11.2011 and later on in the statement recorded on 31.01.2012 they have stated that deal was cancelled. If the AO wanted to rely on their statement dated 08.11.2011, he should have allowed opportunity of cross examination to the assessee of those alleged signatories as sellers mentioned in 'saudachitti'. Therefore, non allowing an opportunity of cross examination makes the assessment order as nullity as held by the Hon`ble Supreme Court in the case of Andaman Timber Industries v. Commissioner of Central Excise Kolkata-II [2015] 13 STD 805 (SC) [2015] 281 CTR 241 (SC) wherein it was held that not allowing the assessee to cross examine witnesses by Adjudicating Authority though statements of those witnesses were made basis of impugned order, amounted to serious flaw which makes impugned order nullity as it amounted to violation of principle of natural justice.

**14.** The learned counsel of the assessee has relied in the case of CIT v. Fairdeal Textile Park (P)Ltd. [2014] 362 ITR 497 (Gujarat) /

43 taxmann.com 393 (Gujarat) wherein it was held that no addition could be made only on the basis of agreement to sell found in search, which were not at all implemented. In the present case, the said 'saudachitti' was altogether entered in to between different parties rather than the actual legal owners who have entered in to registered sale deed after a long gap of period. Hence, ratio of this decision is squarely applicable to the facts of the case. Our view is further fortified, with the judgement of Hon'ble Gujarat High Court in the case of Pr. CIT, Central, Ahmedabad v. Ajay Surendrabhai Patel [2016] 69 taxmann.com 309 (Gujarat) of which head notes reads as "In case of search carried out at premises of 'S', certain documents were seized - On basis of seized documents, Assessing Officer opined that assessee had paid certain amount over and above amount specified in agreement to sell which represented unexplained investment - Tribunal found that assessee was not a party to seized agreement of sale which was basis of making entire addition - Moreover, revenue could not bring any material on record to show that assessee paid actually any amount more than amount stated in registered deed of sale - Revenue even failed to establish any link between assessee and 'V', through whom money was allegedly paid to sellers of plots - Tribunal thus deleted addition made by Assessing Officer - Whether findings recorded by Tribunal

being findings of fact, same did not require any interference - Held, yes [Paras 12 and 14] [In favour of assessee]”.

**15.** In the light of above discussion, we hold that alleged ‘saudachitti’ was entered in to on 26.12.2009 between Shri Ravjibhai P Patel and Shri Veljibhai M Sheta as seller and Shri Kirit M Shah and Shri Mukesh A Morkhiya as purchaser. Even this loose paper is not at all termed as ‘saudachitti’ though the AO has used this terminology and mere a piece of paper only. It cannot be said an agreement to sale also as not entered on stamp paper. However, the above person acted as seller were not the actual legal owner of the impugned land sold. Nor the AO has brought on record any evidence to establish that the so-called sellers have any authority to sell the impugned land or have received any on-money from purchaser. Nor there is any adverse inference drawn in their assessment made under section 143(3) read with section 153A. Further, the ultimate purchaser party of the impugned land was M/s. Munisuvrat Corporation, who was not signatory of said ‘saudachitti’. Further, the said purchaser even was not formed on the date of ‘saudachitti’ i.e. 26.1.22009. The ultimate purchaser of impugned land came into existence with effect from 18.01.2010, hence, it was not born on the date of so-called ‘saudachitti’. Therefore, it cannot be related to sale deed of impugned land. Thus,

on date of 'saudachitti' i.e. 26.12.2009 neither the purchaser party was in existence nor the sellers were legal owners or have authority if any. Hence, said document cannot be relied upon for making any addition in the hands of the assessee who is not a party to it. Further, M/s. Munisuvrat Corporation has executed the agreement to sale on 25.02.2010 and registered sale deed was executed on 03.01.2011, much later then signing of so called 'saudachitti' on 26.12.2009. The 'saudachitti' was seized from the bank locker of Shri Kirit M Shah who had no locus standi in the purchase and sale of impugned land. Nor anyone involved in deal has made a statement before the income-tax authorities of having received or paid nay on-money in respect of said land. Rather they has stated that said 'saudachitti' was cancelled within few days, when the purchaser came to knowledge of actual /legal owners of impugned land. The AO has neither examined the assessee on oath on alleged nor provided any cross-examination of the so-called sellers, witness mentioned in 'saudachitti'. Therefore, respectfully following the ratio of above judgements of Hon`ble High Court and Hon`ble Supreme Court discussed herein above and considering the facts and circumstances of the case, we hold that there was no tangible material before the AO to make the alleged addition on account of unaccounted sale consideration based on alleged 'saudachitti'.

Therefore, the addition made over and above disclosed long-term capital gain is deleted and appeal of the assessee is allowed.

**16.** In the result, the appeal of the assessee stands allowed.

**17.** The order is pronounced by listing the case on the Notice Board under Rule 34(4) of Income Tax Appellate Tribunal Rules 1963.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(O.P.MEENA)**  
**ACCOUNTANT MEMBER**

Surat: Dated: 27<sup>th</sup> August, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**/ / TRUE COPY / /**

**Assistant Registrar, Surat**