

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

**BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

**आयकरअपीलसं./ITA Nos.134 to 137/SRT/2021**

**(निर्धारणवर्ष / Assessment Year: (2017-18)**

**(Virtual Court Hearing)**

The DCIT, Central Circle-2, Surat.	<b>Vs.</b>	Shri Pravinchandra Dahyabhai Umrigar, Bungalow No.01, Opp. Talao Street, Near Govindji Park, Umra, Surat-395007(Guj)
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABPU5216D</b>		
The DCIT, Central Circle-2, Surat.	<b>Vs.</b>	Shri Vasantrai Ambaram Modi, 504, D/1, Subham Residency, Pal, Surat- 395005.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACRPM0852D</b>		
The DCIT, Central Circle-2, Surat.	<b>Vs.</b>	Shri Shankar Mulchand Uttamani, 1/3210-11, New Textile Market, Ring Road, Surat-395002.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAHPU9028R</b>		
The DCIT, Central Circle-2, Surat.	<b>Vs.</b>	Shri Prabodhchandra Jayantilal Patel, 297, Hari Narar-3, Opp. BRC Gate, Udhna, Surat-394210.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFVPP7466F</b>		
<b>(Assessee)</b>		<b>(Respondent)</b>

Assessee by: Shri Rasesh Shah, CA

Revenue by: Shri Ritesh Mishra, CIT(DR)

**सुनवाईकीतारीख/ Date of Hearing : 02/03/2022**

**घोषणाकीतारीख/Date of Pronouncement: 10/05/2022**

**आदेश / O R D E R**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned four appeals filed by the Revenue, pertaining to Assessment Year (AY) 2017-18, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. Since, the issues involved in all the appeals of Revenue are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA Nos.37/SRT/2021 for assessment year 2017-18 in the case of Shri Prabodhchandra Jayantilal Patel, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeal raised by the Revenue, in lead case in ITA No.137/SRT/2021, for AY.2017-18, are as follows:

*“(i) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 13,86,85,279/- without appreciating the fact the addition was made on the basis of incriminating documents, showing unaccounted land transactions carried out by the assessee, found and seized during the course of search proceedings.*

*(ii) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in treating the incriminating documents in the form of duly written and signed "Saudha Chithi" found and seized during the course of search and seizure action carried out by the Department as dumb documents without appreciating the fact that the same carries a solid and complete evidentiary value and the person from whom the same was found and seized has admitted that it was found from his possession in the statement recorded on oath and the contents therein were also clearly explained as to be pertaining to the unaccounted transactions of the land in question as also there was no denial of the fact that the assessee was one of the co-owners of the property in question.*

*(iii) On the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the fact that the Valuation Report of the DVO was mere estimates and sale instances of the locality as per their Jantri Value without taking into consideration the incriminating and corroborative evidences in respect of the very land in question, found and seized during the course of search proceedings and the overall development of the area in which the land in question was situated which includes the Dream City project.*

*(iv) On the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate that the assessee has not been able to bring on record any cogent explanation in respect of 'Saudha Chitthi' being not a live evidence and therefore, the admission of Shri Manoj C. Patel regarding the entirety of the transaction and involvement of 'on money' in the land transaction in question has to be given full effect to. The Ld.CIT(A) further failed to appreciate that the subsequent retraction of statement was only for the purpose and convenience of the parties involved in the whole land transaction and should not be guiding the appellate authority leading to ignoring of the clinching evidences brought on record.*

*(v) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in observing and laying his emphasis that an opportunity for cross examination was*

*not granted to the assessee, which is baseless as the assessee was granted ample opportunities by the Investigating Officer before preparation of appraisal report as also by the assessing officer during the course of assessment proceeding. The assessee, however, choose not to avail them for the reason best known to him and, therefore, demand of cross examination which could at best be 'self-serving' should have been rejected/ignored.*

*(vi) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that one of the Co-owners of the property has admitted that he has sold his share of land to Shri Vasantrai A. Modi for a consideration of Rs.85,00,000/- even through the property was standing in the name of the assessee himself in the revenue records and no registered Sale Deed has been even executed which shows that the land transactions in real estate business are taking place on the basis of "Saudhi Chitti" and hence, the observation of the Ld.CIT(A) that the land in question has not been transferred to purchaser has no merit at all.*

*(vii) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not exercising the powers conferred on him as per the provisions of section 251(l)(a) and (aa) and Explanation thereof to strengthen the addition made by the Assessing Officer on the basis of clinching evidences found and seized during the course of search proceedings and thereby erred in placing heavy reliance on the Valuation Report of the DVO prepared on mere estimates and assessment order passed for the subsequent year by a lower authority."*

4. The above grounds raised by the Revenue relate to addition of Rs.13,86,85,279/- based on "Saudha Chitthi".

5. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us is an Individual and filed his return of income on 31.10.2017, declaring total income at Rs.15,07,850/-. Notice u/s. 143(2) of the Act was issued on 11.09.2018 which was duly served upon the assessee. During the course of search proceedings on 18.03.2017 at the office premises of M/s Hallmark Tour, Mirror image of Samsung mobile of Shri Manoj C. Patel was taken. During post search enquiries, the ITO (Inv.), Surat has analyzed data retrieved from the said mobile. Page No. 10 of file containing printout of data, has details regarding sale of land situated at Survey No. 203, Khajod, Surat. The assessing officer observed that it is an agreement for sale of land (saudha chithi) containing details of location of land, rate of land, area of land, term and conditions for payment, signatures of seller and purchaser with date. The ITO (Inv.) Surat had confronted Shri Manoj C. Patel regarding the notings found in the said page. Shri Manoj C. Patel as a partner of

Hallmark tour had admitted in the statement recorded on oath dated 28.06.2017 that page no. 10 is regarding land situated at Survey No,203, Khajod, Surat admeasuring 9.45 Bigha, which is an agricultural land of "Juni Sharat". The decoded rate is written as 8.82 per Bigha which means Rs.8,82,00,000/- per Bigha, Therefore, the entire amount of the land works out at Rs.83,34,90,000/- (8,82,00,000 x 9.45). Though location of the said piece of land, rate and other terms and conditions can be ascertained from plain reading of said saudha chithi, **however assessing officer noted that ID of buyer and seller is not available on such saudha chithi.**

6. Shri Manoj C. Patel admitted that saudha **chithi** was received on whatsapp from Shri Jayantibhai Babariya of 'Avadh Group', Surat. On conducting enquiries with the Dy. Mamlatdar, City Taluka, Surat to ascertain present status-of land situated at Survey No. 203, Khajod, Surat, the ITO (Inv.), Surat found that the land is standing in the name of Apurva Vikrambhai Pal HUF, Shri Pravin Dahyabhai Umrigar and in the name of the assessee. The statement of the assessee was recorded on oath u/s 131 of the Act on 10.07.2017, wherein he has admitted that he has 1/3<sup>rd</sup> share in the above mentioned land. Accordingly, the Assessing Officer considered share of Rs.27,78,30,000/- (Rs.83,34,90,000/3) as unaccounted income of the assessee having 1/3<sup>rd</sup> share and out of which, Rs.13,89,15,000/- i.e. 50% added in the A.Y.2017-18 and remaining amount of Rs.13,89,15,000/- stated to be pertained to the A.Y.2018-19. Net additions of Rs.13,86,85,279/- were made after allowing cost of acquisition and indexation. With these facts, the Assessing Officer issued show cause notice to the assessee that why Rs.13,89,15,000/- should not be considered as unaccounted income for the A.Y. 2017-18.

7. In response, the assessee submitted that he has not sold the land. The land is still in the name of the assessee. On **saudha chithi**, the Purchasers and Sellers are not identified. No registration of land had took place. The submission of the assessee has been reproduced by the Assessing Officer on page no. 3 to 16 of the assessment order.

8. However, assessing officer rejected the contention of the assessee and observed that it is not necessary in the land transaction that the property is

transferred to the other party and transactions are carried out by the parties other than the seller and buyer in between and sale deed is made by the sellers in the name of last buyer. The in between people, involved in such transactions are either become confirmed party or their name are not mentioned in the sale deed at all. Thus, the income earned by them remains unaccounted. The Assessing Officer further stated that the details of the land as mentioned in 'saudha chithi' exactly matching with the land owned by the assessee along with two co-owners. Statement of Shri Apurva Vikrambhai Pal, one of the other owner of the above mentioned land was recorded on 14.12.2018 in which he has admitted that he has sold 96% of his share to Shri Puranbhai Chandwani, Shri Shankerbhai Uttamani & Others but their names have not been registered in the land record yet, which prove that in land transactions, the names of many people who are involved in the transactions are not mentioned and such people exit from the transactions after earning profit. The Assessing Officer further stated that the land under consideration is situated near to Surat Diamond Bourse (SDB), therefore the rates of the land are going to be higher in future. **During the course of assessment proceedings, the assessee requested for cross-examination of Shri Manoj C. Patel and Shri Jayantibhai Babariya, whose statements were recorded by the Authorized Officer and Assessing Officer but the Assessing Officer rejected the same by stating that the cross-examination has been sought at the flag end of the year, therefore it is misplaced, hence not allowed.** Therefore, Assessing Officer, based on the "saudha chithi" passed the assessment order on 29.12.2018 and made additions of Rs.13,86,85,279/- to the returned income considering unexplained capital gain in the hands of the assessee for the year under consideration.

9. On appeal, Ld. CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before us.

10. Shri Ritesh Mishra, Learned CIT(DR) for the Revenue argues that merely because the **saudha chithi** does not contain the name of assessee, nor signature of assessee, does not mean that transaction should not be executed by parties for future date. Based on the **saudha chithi**, the transaction may happen in future. The Id DR also pleads that merely because the **saudha chithi** is not written in the handwriting

of the assessee, does not mean that **saudha chithi** is a dump document. Therefore, addition made by the Assessing Officer and findings of the Assessing Officer shows that assessee has not paid the due taxes on the basis of **saudha chitthi**.

11. On the other hand, Shri Rasesh Shah, Learned Counsel for the assessee begins by pointing out that said seized 'sauda chithi' does not pertain to the assessee. The assessing officer made addition based on the said 'sauda chithi' which was found from third party, Shri Manoj C. Patel. Shri Manoj C. Patel did not say that said 'sauda chithi' pertains to assessee, therefore the presumptions on the basis of unnamed 'sauda chithi' found from third persons u/s 132(4)/292(C) is not available against the assessee. Thus, Id Counsel argued that 'sauda chithi' is a dumb document, as far as the assessee is concerned, hence, the addition cannot be made on the basis of such dumb documents.

12. The Id Counsel further stated that assessee's matter was referred to the DVO by the Assessing Officer vide letter dated 24.12.2018 and the DVO submitted report on 29.12.2018, which was received by the Assessing Officer on 31.12.2019, wherein the DVO has valued the property at Rs.6,57,36,000/- instead of Rs.83,34,90,000/-. Accordingly, the assessee's 1/3<sup>rd</sup> share comes to Rs.2,19,12,000/- (one third of Rs.6,57,36,000). The Assessing Officer has passed the assessment order for assessment year 2018-19 in the case of the assessee, vide order dated 18.05.2021 and the valuation made by the DVO has been accepted by the Assessing officer. The assessing officer made additions of Rs.1,07,19,318/-( 50% of Rs.2,19,12,000), in the assessment order passed for A.Y.2018-19 and did not make the addition of Rs.13,86,85,279/- as made in assessment order under consideration, which proves that addition based on 'sauda chithi' is not justified. The Id Counsel further contended that while making the addition, the assessing officer has relied upon the statement of Shri Manoj C. Patel, however, assessee has not been provided with the opportunity of cross examination. Finally, the Id Counsel stated that order passed by the Id CIT(A) is just and proper and does not require interference.

13. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that in assessment year 2017-18, the assessing officer worked out the total addition in the hand of the assessee at of Rs.27,78,30,000/- (Rs.83,34,90,000/3) as unaccounted income of the assessee having 1/3<sup>rd</sup> share. Out of said total addition of Rs. 27,78,30,000/-, the 50% of the same, that is Rs.13,89,15,000/- ( 50% Rs. 27,78,30,000) was added in the assessment year 2017-18 (assessment year under consideration) and remaining amount of Rs.13,89,15,000/- stated to be pertained to the assessment year 2018-19. However, surprisingly, in assessment year 2018-19 the addition was made to the tune of Rs.1,07,19,318/- ( based on DVO report) only, therefore, this approach of Revenue ( changing of attitude to harass the assessee) does not inspire confidence. The Assessing Officer ought to have made addition for assessment year 2017-18 at Rs.1,07,19,318/-, instead of addition of Rs.13,86,85,279/- as made in the assessment order under consideration. These facts clearly prove that the additions made by the Assessing Officer only on the basis of 'sauda chithi' are not justified. The DVO's report further prove that the rate of per bigha mentioned in the said 'sauda chithi' is about 12 times higher than the value determined by the DVO, which prove that the contents of the said 'sauda chithi' are not reliable. On this basis too the additions made by the Assessing Officer are found unjustified.

14. We note that there are three components of a taxing statute, viz., subject of the tax, person liable to pay the tax and the rate at which the tax is levied (State of Kerala v. Alex George (2005) 1 SCC 299 p. 306). If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature (Mathuram Agarwal v. State of Madhya Pradesh AIR 2000 SC 109). In terms of Article 265 of Constitution of India, all Acts relating to the imposition of

tax providing, inter alia for the point at which the tax is to be collected, the rate of tax as also the recovery must be carried out in accordance with law (Corporation Bank v. Saraswati Abharansala (2009) 1 SCC 540 15). If a tax has been paid in excess of the tax specified, save and except the cases involving the principle of '*unjust enrichment*', the excess tax realized must be refunded to the assessee.

The Hon'ble Supreme Court in ITO Vs. CH. Atchaiah (1996) 218 ITR 239 (SC) has held that the income should be assessed on the right person, right year and it should be on the right income. From the aforesaid decision of the Hon'ble Supreme Court only the right person and the right person alone is liable to be taxed and not the wrong person. We note that 'sauda chithi' does not pertain to the assessee. The assessing officer made addition based on the said 'sauda chithi' which was found from third party, Shri Manoj C. Patel. **The said 'sauda chithi' does not contain the name of the assessee.** We note that Shri Manoj C. Patel did not say that said 'sauda chithi' pertains to assessee. No opportunity for cross examination of Shri Manoj C. Patel was provided to the assessee. Therefore, we are of the view that said '**sauda chithi**' is not a relevant document to fasten the tax liability on the assessee and to collect tax from the assessee.

15. We note that capital gain arises in the hands of assessee, provided there is transfer of capital asset during the previous year relevant to assessment year under consideration, that is, assessment year 2017-18. During the assessment year 2017-18, the assessee was owner of land, it was not sold. That is, the land has not been transferred to any one by registering the sale deed and it is in the name of the assessee and other two co-owners which is seen even from the report of DVO submitted on 29.12.2018. These facts prove that the transfer of the land under consideration has not taken place, as no sale deed has been registered. The possession of the land is also with the assessee, hence it is not a case of part performance as covered by section 53A of Transfer of Property Act. In this case, there is no proof that the assessee has received any consideration on sale of this land. Keeping in view of these facts, as narrated above, we are of the view that no any income by way of capital gain, has accrued in the hands of the assessee. Lord

Macnaghten, in the case of London County Council v Attorney-General 1901 AC 26, 35-6 (HL), 4 TC 265, 293, held that:

*“Income Tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct.”*

The Constitution of India is the supreme law of the land, and all other laws, including the Income tax Act, are subordinate to the Constitution and must be read and interpreted in the light of the constitutional provisions. (*CIT v Tlarijan Nigam 226 ITR 696.*) In *India Cements Ltd v State of Tamil Nadu*, 188 ITR 690, 699 (SC), a seven-judge Bench of the Hon`ble Supreme Court observed that the Constitution is the mechanism under which the laws are to be made. One of the most important provisions of the Constitution relating to taxation is Article 265, which provides: *“No tax shall be levied or collected except by authority of law”*. Therefore, not only the levy but also the collection of a tax must be under the authority of some law. **We note that section 2(47) of the Act defines ‘transfer’ in relation to a capital asset, which includes: sale, exchange, relinquishment, extinguishment, compulsory acquisition etc. In assessee`s case, the assessee is owner of the asset in the assessment year 2017-18, he did not sale his asset (land), hence, the Revenue does not have authority to collect the capital gain tax from the assessee.**

16. At the cost of repetition we state that during the assessment proceedings, the Assessing Officer referred the matter to District Valuation Officer (DVO) to determine the fair agriculture land at Survey No. 203, Khajod, Surat vide letter dated 24.12.2018 u/s 55A of the Income Tax Act, 1961. As the valuation report from the DVO was pending, therefore, Assessing Officer made additions of Rs.13,86,85,279/- considering unexplained capital gain as mentioned in the ‘sauda chitthi’ found from the third party premises. **The DVO, Surat has submitted his report dated 29.12.2018 which was received by the Assessing Officer on 31.12.2019, in which the total value of the land under consideration has been determined at Rs.6,57,36,000/- and the assessee's share i.e. 1/3<sup>rd</sup> in the above mentioned property was determined by the DVO at Rs.2,19,12,000/-.** The

Assessing Officer while passing the assessment order of the assessee for A.Y.2018-19, immediate subsequent year vide order dated 07.05.2021, has accepted the value determined by the DVO and made the additions of Rs.1,07,19,318/- only i.e. 50% in the assessment order instead of Rs.13,86,85,279/- as made for the year consideration. This addition was after allowing cost of acquisition and indexation. From these facts, it is clear that Assessing Officer himself has accepted the valuation report which determined value of the total land at Rs.6,57,36,000/- instead of Rs.83,34,90,000/-. The assessee's 1/3<sup>rd</sup> share has been accepted by the Assessing Officer A.Y.2018-19 at Rs.2,19,12,000/- instead of Rs.27,78,30,000/- while passing the assessment order for assessment year 2018-19. The Id Counsel pleaded that the 'sauda chithi' has been found from the possession of a third party i.e. Shri Manoj C. Patel, who did not say that the said seized 'sauda chithi' pertains to the assessee and therefore the presumptions on the basis of unnamed 'sauda chithi' found from third persons u/s. 132(4)/292(C) is not available against the assessee. The Id Counsel further stated that the seized 'sauda chithi' neither mentioned the assessee's name nor having his signature and it is not in the hand writing of the assessee. **It does not contain name of the purchaser or seller, hence the 'sauda chithi' cannot be relied upon to make the additions for undisclosed capital gains on sale of land in the hands of the assessee.** Moreover, there is no statement i.e. either Shri Manoj C. Patel from whose possession the aforesaid 'sauda chithi' was found or Shri Jayantibhai Babariya, who has said to have sent the 'sauda chithi' on whatsapp to Shri Manoj C. Patel that the seized 'sauda chithi' pertains to the assessee. There is no evidence of receipts of any money by the assessee. The assessee also contended that sale of the land under consideration has not been made, because, as on date the said agriculture land still stands registered in the assessee's name with other two co-owners and the possession also rests with the assessee, which prove that the transfer has not been taken place. Thus, there is no question of earning any undisclosed capital gain. In support of all these contentions, the Id Counsel cited several case laws of Higher Judicial Authorities in which it has been held that additions on the basis of documents found at third party premises cannot be sustained only on the basis of

surmises and conjectures. The assessee further contended that the additions were made by the Assessing Officer before receipt of valuation report from the DVO. The DVO submitted his report on 29.12.2018, which was received by the Assessing Officer on 31.12.2019 and in the above mentioned valuation report, the DVO has valued the price of land at Rs.6,57,36,000/- instead of Rs.83,34,90,000/- as written in the 'sauda chithi,' which itself prove that the rate mentioned in the sauda chithi is not clear at all. The DVO has valued the property at about 8% of the price written in said 'sauda chithi'. Therefore, such 'sauda chithi' cannot be relied upon for making the additions in the assessee's case.

17. We note that Id Counsel also contended that cross-examination of Shri Manoj C. Patel and Shri Jayantibhai Babariya whose statements were recorded by the Investigation Wing and also by the Assessing Officer, was requested from the Assessing Officer. However, the same has been denied by the Assessing Officer stating that the request for cross-examination has been submitted at the flag end of the year. The assessee stated that the assessment under consideration was not getting barred by limitation of time on 31<sup>st</sup> December, 2018 and the Assessing Officer had one more year to complete the assessment u/s 143(3) of the Act. Therefore, the contention of the Assessing Officer that request has been submitted at the flag end of the year is factually incorrect. Thus, we note that assessee has requested for cross examination of Shri Manoj C. Patel and Shri Jayantibhai Babariya as mentioned in the para 8.9 of the assessment order, that is, Statement of these two persons were recorded by the Authorized Officer and the Assessing Officer, during the course of search and during the course of assessment proceedings respectively. The Assessing Officer has relied upon the statement of Shri Manoj C. Patel for making these additions. However, the opportunity of cross examination was not provided by stating that it has been submitted at the fag end of the year. It is settled law that any additions made in absence of providing opportunity of cross examinations of persons, whose statement has been relied upon for making the additions is in violation of natural justice, hence cannot be sustained. The Hon'ble Supreme Court of India, in the case of Krishnachand Chelaram Vs. CIT 125 ITR 713 (SC) and Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR

0241 (SC) has held that additions without providing the opportunity of cross examination is in violation of natural justice.

We also note that not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witness were made the basis of the impugned order is a serious flaw which makes the order nullity. We note that same view was expressed by the Hon`ble Calcutta High Court in the case of Eastern Commercial Enterprises 210 ITR 103 (Cal), wherein it was held that it is a trite law that cross examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against the party unless the party is put on notice of the case made out against him. Therefore, the addition made by the assessing officer based on the statement of Shri Manoj C. Patel, is not sustainable in law, as the assessing officer did not provide an opportunity to the assessee to cross examine the statement of Shri Manoj C. Patel, therefore addition made by the assessing officer has rightly been deleted by Id CIT(A).

Keeping-in view these binding judgments of the Hon'ble Supreme Court of India, the additions made by the Assessing Officer are not found justified on this ground too hence, we are of the view that Id CIT(A) has rightly deleted the addition.

18. The Id Counsel further contended that the additions has been made by the Assessing Officer in the A.Y. 2017-18 however, the land has not been sold till date as stated above and as per legally settled principle, the transfer of capital asset takes place in the year, in which the sale deed is registered, in this case, the sale deed has not been made till date and possession of the property is with the assessee. Therefore, additions are legally not justified on this count too. It is undisputed fact that additions have been made by the Assessing Officer on the basis of 'sauda chithi' found during the course of search on 18.03.2017 at the premises of M/s, Hallmark Tour after taking mirror images of Samsung mobile phone of Shri Manoj C. Patel. This mirror image was taken after few months of search and statement of Shri Manoj C. Patel was recorded on this issue first time on 28.06.2017. In the statement, Shri Manoj C, Patel stated that the said 'sauda chithi' has been sent to him on whatsapp by one Shri Jayantibhai Babariya of Avadh Group. In the above

‘sauda chithi’, signature of buyers and sellers are there but these are not legible and from the ‘sauda chithi’ itself, it cannot be ascertained that who is the buyer and who is the seller of land. Therefore, the Assessing Officer made enquiries from Dy. Marnlatdar Officer, Surat about the ownership of land i.e. plot no. 203 Khajod, Surat and found that land is in the name of the assessee and two other persons namely Apurva Vikrambhai Pal HUF and Pravinchandra Dahyabhai Umrigar. The assessee has 1/3<sup>rd</sup> share in the above mentioned land. Shri Manoj C. Patel also did not mention the name of the assessee, while recording his statement u/s 132(4) of the Act on 28.06.2017. These facts clearly shows that the ‘sauda chithi’ which has been made the basis for these additions was found at the premises of third party and not at the premises of assessee, therefore presumption of section 132(4) and section 292(C) are not available against the assessee. The above mentioned ‘sauda chithi’ is neither in the hand writing of the assessee nor it is signed by the assessee. The ‘sauda chithi’ was found from the mobile phone of Shri Manoj C. Patel who did not identify the assessee as party involved in the above mentioned transactions. Moreover, the ‘sauda chithi’ does not contain the name of the assessee at all.

19. The Id CIT(A) observed that Statement of Shri Pravainchandra Dahyabhai Umrigar, other co-owner of the land was also recorded by the Assessing Officer on 14.12.2018, who also confirmed his ownership in the land mentioned in the ‘sauda chithi’. Shri Pravainchandra Dahyabhai Umrigar, further stated that he has not entered into any transactions as written in the said ‘sauda chithi’. Statement of the assessee was also recorded u/s 131 of the Act by the Assessing Officer on 14.12.2018, in which he stated that he has not sold his share in the land written in the said ‘sauda chithi’ to anyone and did not receive any amount as mentioned in the ‘sauda chithi’. He stated that he is seeing the sauda chithi first time and he does not know who has signed the said ‘sauda chithi’. Statement of Shri Apurva Vikrambhai Pal, other co-owner was also recorded by the Assessing Officer on 14.12.2018 u/s 131 of the Act, who confirmed the 1/3<sup>rd</sup> ownership in the land written in the ‘sauda chithi’, but he stated that he is seeing this ‘sauda chithi’ first time and totally unaware about the other details written on the said ‘sauda chithi’. Apart from these statement recorded by the Assessing Officer of all the related parties, Shri Manoj C.

Patel from whose possession, the said 'sauda chithi' was found and seized, filed retraction on 13.12.2018 before the Assessing Officer which is notarized and on stamp paper stating that his statement about receipt of said 'sauda chithi' from Shri Jayantibhai Babariya on his mobile phone through whatsapp recorded on 18.06.2017 is not true and correct and thus, he is retracting from that statement. These facts clearly prove that the 'sauda chithi' is a dumb document as far as the assessee is concerned. Hence, the additions cannot be made on the basis of such dumb documents. The Id CIT(A) relied on the judgment of Hon'ble Supreme Court of India in the case of Common Cause (A Registered Society) & Others Vs. Union of India & Others (2017) 98 CCH 0028 (SC) and CBI Vs. V.C. Shiukla AIR 1998 SC 1406. As the additions has been made by the Assessing Officer on the basis of dumb documents, these additions deserves to be deleted.

20. The Id CIT(A) observed that land has not been transferred to any one by registering the sale deed and it is in the name of the assessee and other two co-owners which is seen even from the report of DVO submitted on 29.12.2018. These facts prove that the transfer of the land under consideration has not taken place, as sale deed has not been registered and as per the binding judgment of Hon'ble High Court of Gujarat in the case of CIT vs. Ashaland Corporation (1992) 133 ITR 55 (Guj.) in which it has been held that the transfer of the immovable property take place on the date, sale deed is registered. The assessee's case is further found covered by the judgment of Hon'ble Supreme Court of India in the case Alapati Venkataramiah vs. CIT (1965) 57 ITR 185 (SC), in which it has been held that title to immovable assets could not pass till conveyance was executed and registered. The possession of the land is also with the assessee; hence it is not a case of part performance as covered by section 53A of Transfer of Property Act. In the assessee's case, there is no proof that the assessee has received any consideration on sale of this land. Keeping in view of these binding judgments, the Id CIT(A) deleted the addition. We have gone through the findings of Id CIT(A) and noted that there is no infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on these

additions are, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

21. Since the facts and circumstances in the lead case ITA Nos.37/SRT/2021 for assessment year 2017-18 in the case of Shri Prabodhchandra Jayantilal Patel, are identical and similar with other assessees, therefore our decision in the lead case in ITA Nos.37/SRT/2021, shall apply *mutatis mutandis* to other appeals also. Accordingly, other appeals of Revenue are also dismissed.

22. In the result, appeals filed by the Revenue ( in ITA nos. 134 to 136/SRT/2021) are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced in the open court on 10/05/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूरत /Surat / दिनांक/ Date: 10/05/2022

*SAMANTA*

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat