

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA Nos. 2131 & 2135/Mum/2021
(Assessment Years 2014-15 & 2012-13)

ACIT 2(3)(1)
R. no. 552, Aayakar Bhavan,
M.K. Road,
Mumbai-400 001
(Appellant)

Vs.

M/s Thakkar Housing
Development Pvt. Ltd.
37-39, Kantol Niwas,
Modi Street,
Mumbai-400 001
(Respondent)

PAN No. AABCT6067C

ITA No. 2132/Mum/2021
(Assessment Year 2014-15)

ACIT 2(3)(1)
R. no. 552, Aayakar Bhavan,
M.K. Road,
Mumbai-400 001
(Appellant)

Vs.

M/s Thakkar Grih Nirman Pvt.
Ltd.
37-39, Kantol Niwas,
Modi Street,
Mumbai-400 001
(Respondent)

PAN No. AABCT6069N

ITA Nos. 2133 & 2134/Mum/2021
(Assessment Years 2012-13 & 2014-15)

ACIT 2(3)(1)
R. no. 552, Aayakar Bhavan,
M.K. Road,
Mumbai-400 001
(Appellant)

Vs.

M/s Thakkar apna Ghar
Nirman P. Ltd.
37-39, Kantol Niwas,
Modi Street,
Mumbai-400 001
(Respondent)

PAN No. AABCT6068N

Assessee by : Shri Rishabh Shah, AR
Revenue by : Shri Amol Kirtane, CIT DR

Date of hearing: 24.05.2022
Date of pronouncement 22.08.2022
:

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the five appeals filed by The Assistant Commissioner Of Income Tax, Circle (2) (3) (1), Mumbai in case of three different assesses, where same issue arising out of same transaction are involved, therefore, the revenue as well as the assessee argued those appeals together and therefore, we dispose of those appeals by this common order.
02. ITA No. 2135/Mum/2021 for A.Y. 2012-13 and ITA number 2131/M/2021 for assessment year 2014 – 15 are filed by the Asst. Commissioner of Income-tax, Circle 2(3)(1), Mumbai (the learned Assessing Officer), against appellate order passed by the Commissioner of Income-tax (Appeals)-49, Mumbai [the learned CIT (A)] dated 13th August, 2021 in case of **M/s Thakkar Housing Development Pvt. Ltd.**
03. ITA number 2133/M/2021 for assessment year 2012 – 13 and ITA number 2132/M/2021 for assessment year 2014 – 15 is filed by the Asst Commissioner of income tax – Circle 2 (3) (1), Mumbai (the learned AO) against the order passed by the Commissioner of income tax (appeals) – 49, Mumbai dated 16/8/2021 in case of **M/s Thakkar Grih Nirman Pvt Limited.**

04. ITA number 2134/M/2021 is filed by the Asst Commissioner of income tax – 2 (3) (1), Mumbai for assessment year 2014 – 15 against the order passed by the Commissioner of income tax (appeals) – 49, Mumbai dated 16/8/2021 in case of **M/s Thakkars Apna Ghar Nirman Pvt Ltd** .

05. We first state the facts in case of ITA number In ITA No 2135/M/2021 where learned Assessing Officer in case of assessment year 12-13 of Assessee M/S Thakkar Housing Development Private Limited has raised following grounds of appeal:-

"(a) On the facts and circumstances of the case and in law, the Ld CIT(A) erred in not appreciating the fact that members of Kokani family willfully admitted before the Hon'ble ITSC that they had received sale consideration of Rs.65,21,25,992/- in cheque and Rs.65,21,25,992/-in cash from Thakker Group for sale of land at Savargaon, Nashik and that this is specifically mentioned in the SOF in the confidential annexure-F at page No. 17/47.

(b) "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that Kokani Group members have also given party wise break up of cash received from Thakker group entities (purchase parties) over and above the consideration disclosed in the sale deeds in their declaration before the Hon'ble ITSC and that the Hon'ble ITSC had accepted their declaration and it is part of order u/s.245D(4) of the IT Act."

(c) On the facts and circumstances of the case and in law, the learned CIT(A) erred in considering only regular books of account maintained by the assessee and not taking into account various loose papers with evidentiary value found in possession of the Kokani Group during search proceedings.

(d) On the facts and circumstances of the case and in law, the learned CIT(A) erred in relying on the Hon'ble ITAT Pune's decision in related cases i.e. Dhananjay Marketing Put. Ltd. and M/s. Asia Food Products Ltd. as same facts are not applicable in the present case since after correlating documents showing various receipts from the party mentioned as "T" with the other documents seized during the course of search conducted on Kokani Family, it clearly emerges that these amounts represent unaccounted cash paid by the Thakker Group as " On Money" towards purchase of land at Savargaon, Nashik.

(e) On the facts and circumstances of the case and in law, the learned CIT(A) erred in completely ignoring that in the document Page No. 5 of Annexure A1, Item No. 5 seized from the premises of Mr. Fakhruddin S.. Kokani, a receipt of Rs. 3,36,00,000/- from Thakker' towards transactions pertaining to Savargaon (i.e. sale of land at Savargaon to Thakker Group) had been categorically recorded and that, the name Thakker had been clearly mentioned against receipts in page No. 17 of Annexure A, Item No.7, seized from the same premise also."

(f) The appellant craves to amend, alter, and delete any of the aforesaid grounds and add any additional grounds either before or at the time of hearing.”

06. The grounds of appeal raised by the learned assessing officer in all other appeals are similar. Therefore, we first state the facts of the case in ITA number 21354 assessment year 2012 – 13 and decide it. The same decision is applied to other appeals thereafter.
07. The facts of the case show that assessee is a company engaged in the business of builders and construction. A Search and seizure action under Section 132 of the Income-tax Act, 1961 (the Act) was conducted on 8th September, 2015 on Kokani Group of Nasik. Based on that search, information was available that namely (1) M/s Thakker Apna Ghar Pvt. Ltd, (2) M/s Thakker Housing Development Pvt. LTd and (3) M/s Thakker Gruh Nirman Pvt. Ltd. (4) Dhannjay Marketing Pvt Ltd , (5) Asian Food Products Limited (6) Shri Karan Vijay Gupta [collectively known as `Thakker Group] purchased the land at survey number 53/2 area admeasuring 20H.65R, survey number 54 area admeasuring 9H18R and survey number 55 area admeasuring 10H.41R i.e. Total area admeasuring 92 acres and 20 Gunthas of Savargaon Taluka District Nashik for consideration of ₹ 652,125,992/- as per sale deed dated 5/7/2013 from 14 parties known as Kokani group of Nasik. During the course of search on Kokani group certain loose sheets were found and seized which were forwarded to the AO of the assessee. The learned AO analysed the seized material found from the premises of the sellers and statement recorded u/s 132 (4) of the act wherein the sellers have accepted the cash over and above the consideration stated in the sale deed to the tune of ₹ 119,419,700/- and therefore the learned AO

drew inference that Thakkar Group has paid on money of ₹ 652,125,992/- at the time of purchase of land and the above consideration was divided amongst the buyers of the land in the portion of the land purchased by them.

08. Satisfaction was recorded by the learned Assessing Officer that the purchase of land by Thakker Group from Kokani Group parties shows cash payment of ₹65,21,25,992/- on various occasions. As assessee being one of the party, based on satisfaction note, notice under Section 153C of the Act was issued on 30th March, 2013. On 9th April, 2018, Assessee requested for satisfaction note which was provided. Subsequently, on 23rd April, 2018 assessee filed nil return of income for A.Y. 2010-11 to A.Y. 2015-16.
09. After issue of necessary statutory notices, the learned Assessing Officer issued a show cause notice on 17th November, 2018, wherein assessee was required to explain why a sum of ₹14,10,00,000/- should not be added under Section 69 of the Act being share of the assessee paid for purchase of Savargaon land for A.Y. 2010-11 to 2015-16. By this show cause notice, the learned Assessing Officer also provided the opportunity of cross examination of the seller parties to the assessee.
010. In response to the above notice, the assessee contended that it did not pay any sum in cash to Kokani family members as alleged by the Department. Regarding cross examination, in response to summons to the seller party, none of them appeared on the appointed date. The Director of the assessee company attended on the same date.
011. Subsequent to the issue of show cause notice, the seller parties Kokani Group filed a petition before Settlement Commission

who passed an order under Section 245D(4) of the Act on 17th July, 2018, wherein the seller admitted of having received sale consideration of ₹65,00,00,000/- in cash from Thakker Group. The assessee was also confronted with above order, But still assessee denied any cash payment to Kokani Group for purchase of savargaon Land.

012. The learned Assessing Officer further issued show cause notice dated 18th December, 2018 asking the assessee to furnish the explanation with respect to proposed addition and the learned Assessing Officer also asked to produce sellers as a witness of the assessee. The assessee denied any cash payment once again but failed to produce the seller. Consequently, another notice dated 26th December, 2018 was issued to the assessee reiterating the same facts and seeking same explanation. Assessee submitted its reply on 28th December, 2018 denying the cash payment. Based on this, the learned Assessing Officer held that during the assessment year 2012-13, assessee has made a cash payment of ₹1,56,93,324/- for purchase of land at Savargaon and accordingly, the order under Section 143(3) read with section 153C of the Act was passed on 30th December, 2018 wherein the learned assessing officer assessed the total income of the assessee at Rs 1,56,93,324/- against returned of income filed by the assessee at Rs Nil.

013. The assessee carried the matter before the learned CIT (A), who passed the order on 30th August, 2021 for A.Y. 2011-12, 2012-13, 2013-14 and 2014-15 deleting the above addition.

014. The learned CIT (A) dealt with the addition in paragraph no. 10 of his order as under:-

"10.1. I have considered the facts of the case, the findings of the Ld. AO as appearing in the impugned

assessment order, the submissions of the assessee and the documents filed by the assessee in the paper book.

10.2 The appellant along with other 5 parties purchased land at Survey No.53/2 area admeasuring 20H.65R. (18H.46R.), Survey No.54 area admeasuring 09H.18R. (08H.97R.) & Survey No.55 area admeasuring 10H.41R. (09H.57R.) i.e. total area admeasuring 92 Acres 20 Gunthe of Savargaon, Tal. & Dist. Nashik for consideration of Rs.65,21,25,992/- vide Sale Deed dated 05.07.2013 from 14 parties known as Kokni group of Nashik. The purchaser of the property in question along with the appellant includes following 6 parties –

(i) M/s. Thakkers Housing Development Pvt. Ltd.

(ii) M/s Dhananjay Marketing Pvt. Ltd..

(iii) M/s. Thakkers Apna Ghar Pvt. Ltd.

(iv) M/s. Asian Food Products Ltd.

(v) Shri Karan Vijay Gupta

(vi) M/s. Thakkers Gruh Nirman Pvt. Ltd.

(hereinafter called "Thakker Group")

4. The seller of the said lands are as under :

(1) Ms. Farzana Sallauddin Kokni

() Mr. Fakruddin Sallauddin Kokni

(i) Ms. Noorbano Sallauddin Kokni

(v) Mr. Kadarsaheb Kutubuddin Kokni

(v) Ms. Yasmin Kadarsaheb Kokni

(vi) Mr. Aljaj Kutubuddin Kokni

(vi) Mr. Muzaffar Kutubuddin Kokni

(viii) Mr. Gulnar Allauddin Kokni

(ix) Ms. Naida Anjum Sameer Kokni

(x) Mr. Nizamuddin Faridoddin Kokni

(xi) Mr. Iftekar Faridoddin Kokni

(xii) Mr. Tamizoddin Faridoddin Kokni

(xiii) Mr. Gulamgaus Allauddin Kokni

(xiv) Mr. Mainuddin Nizamoddin Kokni

(hereinafter called "Kokni Group")

10.3. There were also search and seizure operations u/s 132 of the Act in the premises of said Kokni group of Nashik on 08.09.2015. During the course of search proceedings in the said Kokni group, certain loose sheets were found and seized. The said sheets found and seized were forwarded to the Assessing Officer of the appellant. The Assessing Officer then proceeded with analysis of the seized material found from the premises of the sellers, namely, (i) Mr. Fakruddin S. Kokni (Party No. R-1), (ii) Mr. Imran Iftekar Kokni (Party No.R-2), (iii) Mrs. Nizamoddin Kokni (Party No.R-4) and (iv) Mr. Tamizuddin Kokni (Party No.R-5). Based on the information and considering the fact that the seller of the subject land i.e. Kokni family members had stated in the statement recorded u/s 132(4) of the Act, during the course of search in their hands that they accepted the cash over and above the consideration stated in the sale deed to the tune of Rs. 11,94,19,700/-, the Assessing Officer drew inference that the Thakker Group had paid on-money of Rs.65,21,25,992/- at the time of purchase of land

to the Kokni group and said consideration was divided among the buyers of the land in the proportion of the land purchased by them. The appellant being purchaser of 20 acres of the land out of 92.6 was held to have paid on-money payment to the extent of Rs. 14,10,00,214/- which was taxed in the respective years of payment as per the assessment orders under consideration.

10.4. At the very outset, the appellant vide it's submission has highlighted the fact that identical additions on account of on-money payment were made in case of the other co-owners as well. However, in case of two co-owners of land i.e. M/s. Dhananjay Marketing Pvt. Ltd. and M/s. Asia Food Products Ltd, the Hon'ble Pune Tribunal vide it's order dated 19.05.2021 and 21.06.2021 respectively has deleted the said additions on account of on-money payment. On comparison of the facts of the case with that of the co-owners it can be seen that the AO has relied upon the identical documents and derived identical findings as that made in the cases of M/s. Dhananjay Marketing Pvt. Ltd. and M/s. Asia Food Products Ltd. It can be seen that even the amount involved in the case of the appellant is also identical to one of co-owners of land i.e. M/s. Dhananjay Marketing Pvt. Ltd.

10.5. Hon'ble 'A' Bench of the Pune ITAT, in the case of one of the co-owners of the aforesaid land M/s. Dhananjay Marketing Pvt. Ltd. has considered the matter in detail and has decided the same vide an order dated 19.05.2021 [IT(SS)A No. 65/Pun/2017]

for AY 2012-13 and 2014-15. In this case, the Hon'ble ITAT has noted the factual matrix as below and had decided the issue with following findings:

"2. Briefly, the facts of the case are as under:

A search and seizure operations u/s 132 of the Income Tax Act, 1961 (the Act) were conducted in the premises of Thakker group of companies at Nashik on 15.01.2015. The appellant herein is also covered in the same search operation. The appellant, namely, M/s. Dhananjay Marketing Pvt. Ltd. is a company incorporated under the provisions of the Companies Act, 1956, it is engaged in the business of builders and developers. The return of income for the assessment year 2014-15 was filed on 31.03.2015 declaring the total income of Rs.Nil. Consequent upon search and seizure action u/s 132, a notice u/s 153A of the Act was issued on 28.10.2015. In response to the notice u/s 153A of the Act, the return of income was filed on 01.12.2015 declaring Rs. Nil income. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Central Circle-1, Nashik (the Assessing Officer) vide order dated 30.12.2016 passed u/s 153A r.w.S. 143(3) of the Act at a total income of Rs. 10,06,60,053/3. The factual matrix of the case leading to the above addition is as under. The appellant along with other 5 parties purchased land at Survey No. 53/2 area admeasuring 20H.65R (18H 46R), Survey No 54 area admeasuring 09H 18R. (08H.97R) & Survey No.55 area admeasuring 10H 41R. (09H 57R) o total area admeasuring 92 Acres 20 Gunthe of Savargaon, Tal & Dist. Nashik for consideration of Rs. 65,21,25,992 vide Sale Deed dated 05.07.2013 from 14 parties known as Kokani group of Nashik. The purchaser of

the property in question along with the appellant includes following 6 parties:

(i) M/s. Thakkers Housing Development Pvt. Ltd.

(ii) M/s Dhananjay Marketing Pvt. Ltd.

(iii) M/s. Thakkers Apna Ghar Pvt. Ltd.

(iv) M/s Asian Food Products Ltd.

(V) Shri Karan Vijay Gupta

(vi) M/s. Thakkers Gruh Nirman Pvt. Ltd.

(hereinafter called "Thakker Group")

4. The seller of the said lands are as under

(i) Ms. Farzana Sallauddin Kokani

(ii) Mr. Fakruddin Sallauddin Kokani

(iii) Ms. Noorbano Sallauddin Kokani

(iv) Mr. Kadarsaheb Kutubuddin Kokani

(v) Ms. Yasmin Kadarsaheb Kokani

(vi) Mr. Aljaj Kutubuddin Kokani

(vii) Mr. Muzaffar Kutubuddin Kokani

(viii) Mr. Gulnar Allauddin Kokani

(ix) Ms. Naida Anjum Sameer Kokani

(x) Mr. Nizamuddin Faridoddin Kokani

(xi) Mr. Iftekar Faridoddin Kokani

(xii) Mr. Tamizoddin Faridoddin Kokani

(xiii) Mr. Gulamgaus Allauddin Kokani

(xiv) Mr. Mainuddin Nizamuddin Kokani

(hereinafter called "Kokani Group")

5. There were also search and seizure operations u/s 132 of the Act in the premises of said Kokani group of Nashik on 15.01.2015. During the course of search proceedings in the said Kokani group, certain loose sheets were found and seized which includes the Sathe Khat agreement. All these transactions of the land were also found and seized from the premises marked as Annexure A-1, Item No. 4, page no. 1 to 76. That apart, the Department also found Item No.5, Page No. 17 of Annexure A-1 a loose sheet containing notings aggregating to sum of Rs.8,58,19,700/- and Page No.5 in the same Annexure also contains a notings aggregating to sum of Rs.3,36,00,000/- scanned images of these loose sheets are extracted by the Assessing Officer vide Page No.7 and 8 of the assessment order. According to the Assessing Officer, these notings indicate the receipt of on-money on sale of the said land from this Thakker group of companies. The amount mentioned in the said notings aggregate to a sum of Rs. 11,94,19,700/- The above amount of Rs. 11,94,19,700 came to be disclosed in the hands of this Kokani group u/s 132(4) of the Act stating that this represents the amount received over and above the stated consideration in the said Sale Deed from the Thakker group of companies.

6. The Assessing Officer then proceeded with analysis of the seized material found from the premises of the sellers, namely,

(i) Mr. Fakruddin S. Kokani (Party No. R-1).

(ii) Mr. Imran Iftekar Kokani (Party No. R-2),

(iii) Mrs. Nizamoddin Kokani (Party No. R-4) and

(iv) Mr. Tamizuddin Kokani (Party No. R-5).

The Assessing Officer after analyzing the documents found and seized in the case of Mr. Imran Iftekar Kokani scanned images of which are extracted at Page No.11 of the assessment order, concluded that letter T finding place in the loose sheet represents "Thakker" and the amounts found therein represents the consideration received from the said Thakker group of company. Accordingly, he drew adverse inference that vendors i.e. Kokani group had received cash from the Thakker group of companies over and above the stated consideration in proportion to the share of land held by him in the subject land sold to Thakker group.

7. Similarly, the Assessing Officer also analyzed the seized documents found and seized from the premises of Mr. Tamizuddin Kokani marked as Annexure-A, Item No.1 & 2, concluded that the said Mr. Tamizuddin Kokani incurred cash expenses to the extent of Rs. 3. 34 crores on development of various lands at Savargaon The scanned images of seized documents are reproduced vide page no. 13 and 14 of the assessment order. However, despite several notices issued to the said Mr. Tamizuddin Kokani, he had not turned up for examination before the Assessing Officer. However, the Assessing Officer taking note of the fact that the share of the said Mr. Tamizuddin Kokani out of the cash receipt of Rs.11.94 crores is only Rs.1.41 crores and in the absence of any other source of income, he presumed that this cash expenses were incurred on development of land was out of on money received on the sale of the subject land to the Thakker group.

8. Further, on analysis of the documents found and seized from the premises Mr. Asif Nizamoddin Kakani who had 11.82% share in the subject land sold, the Assessing Officer found that the said Mr.

Asif Nizamuddin Kakani had purchased land by paying the consideration in cash and cash expenditure was incurred for the purpose of constructing the bungalow and purchase of jewellery and cash deposits in banks. The total expenditure on the above aggregating to sum of Rs.5.91 crores The details of which are extracted by the Assessing Officer at page no 15 of the assessment order. The Assessing Officer is of the opinion that the share of cash received in Savargaon land, the share of the said Mr. Asif Nizamuddin Kokani is only 1.41 crores and in the absence of any other sources of income there was no possibility incurring the expenditure to the tune of 5.91 crores in cash. He then concluded that the sources of cash expenditure are only out of onmoney received from Thakker group.

9. Further, from the documents found and seized from the premises of Mr. Fakruddin S Kokani, Annexure-A, Item No. to 7 found that the cash receipt of Rs.8.58 crores was applied by 3 parties, namely: @) Mr. Fakruddin S. Kokani, () Ms Farzana S. Kokani and () Ms Noorbano S. Kokani. The Assessing Officer rejected the contention of the sellers of land namely, Kokani group that cash of Rs.8 58 crores was received on behalf of all the sellers and also gave a finding that Mr. Fakruddin Kokani and Mr. Fakruddin S. Kokani together held on 13.16% of the subject lands sold, the total on-money cash received by this group of persons comes to Rs 8,58,19,700/- Based on this, he concluded that all other sellers also received equal amount of cash over and above the amount stated in the sale deeds.

10. Similarly, the Assessing Officer also analyzed the documents found and seized from the premises of Mr. Rehana Tamizuddin Kokani who is Party No.R-5 containing total pages no. 1 to 128

wherein notings of title as Savargaon Land Expenses were found. Copy of the papers is extracted at page no. 19 of the assessment order. The aggregate expenditure incurred on account of sale of the Savargaon land Belgaon, Mhasrul & others totaling to Rs.3.31.05,459/ leaving balance of Rs.3,36,99.334/ The Assessing Officer also rejected the explanation given by the appellant that the above expenditure was incurred out of the cash receipt of Rs.3.36 crores received on behalf of all the sellers of Kokani family on the ground that entire amount of Rs.3.31 crores received on behalf of all the sellers, as to how only Mr. Rehana Tamizuddin Kokani of such Kokani group alone incurred Rs.3,31,05,459/- on his behalf. Based on the above analysis and findings, the Assessing Officer came to conclusion that all the sellers of Kokani family had received sale consideration over and above the sale consideration received by cheque and equivalent amount in cash also. The said amount of Rs. 65,21,25,992/- was divided among all the sellers of the land of Kokani family in proportion to the land held by them. The details of apportionment of the said alleged on-money received are contained in page no.20 of the assessment order.

11. Similarly, the Assessing Officer presumed that the Thakker group of companies who purchased the land from Kokani group of companies have paid consideration in cash, in order to examine them, a notice u/s 131 of the Act was issued on 02.01.2015 to one Mr. Gaurav J. Thakker, who is stated to have been denied having paid any consideration over and above what is stated in the sale consideration. The Assessing Officer also issued a show cause notice to one Mr. Abhishek Thakker who was supposed to have been involved in this land transaction. It appears that he had not

complied with the summons issued u/s 131 of the Act.

12. Based on the information and considering the fact that the seller of the subject land i.e. Kokani family members had stated in the statement recorded u/s 132(4) of the Act, during the course of search in their hands that they accepted the cash over and above the consideration stated in the sale deed to the tune of Rs. 11,94, 19,700/-, the Assessing Officer drew inference that the Thakker group had paid-on-money of Rs. 65,21,25,992/- at the time of purchase of land to the Kokani group and said consideration was divided among the buyers of the land in the proportion of the land purchased by them. The appellant was being purchaser of 20 acres of the land out of 92.5 acres was asked to explain the source of the alleged on-money payment of Rs. 14, 10,00,214/- vide show-cause notice dated 07.12.2016. In response to the show-cause notice, the assessee submitted reply vide letter dated 23rd December, 2016 said reply was extracted by the Assessing Officer at page 24 to 42 i.e. para 11 of the assessment order. The gist of the explanation to the show cause notice can be summarized as under :

1. The allegation that the Thakker group of companies had paid on money consideration to Kokani group is denied, as it is based on purely on doubt, presumption and conjectures as the analysis of the loose sheets found in the business premises of the sellers of the land is purely based on assumption, presumption, and there is nothing on record suggesting that the figures finding place in the loose sheets are in relation to the sale of the subject land. II. The conclusion received by Assessing Officer based on the notings found in the loose sheets is based on investigation,

suspicious etc. The findings of the Assessing Officer that the sellers of the party have incurred expenditure in cash is only out of the receipt of on money from the Thakker group of companies is merely based on suspicious, investigation. There is no material on record to suggesting that the sellers of the land have incurred expenses in cash. The documents found and seized does not reveal anything. They are simply a dumb documents and the sellers of the land i.e. Kokani group had flatly denied the allegation of receipt of any on-money over and above the stated consideration of Rs.65,21,25,992/- on cross examination. III. The appellant also ruled out the probability of payment of on money consideration citing the fact that the stated consideration in a sale deed was Rs.65,21,25,992/- as against the valuation as per Stamp Duty Ready Reckoner of Rs.6,52,00,000/- i.e. ten times higher than the stamp duty valuation and also giving comparable sale instance of locality. IV. During the course of search proceedings in the Thakker group of companies on 15.01.2015, no evidence whatsoever was found in support of payment of on-money consideration of Rs. 65,21,24,992/- over and above the apparent consideration. The sellers of the land were also entered into other land deals. Therefore, it cannot be presumed that, at all, there is receipt of any on-money by Konkani group, it is only from Thakker Group. V. The appellant along with other co-owners of subject land offered to sell the land to MIDC for consideration of Rs.90 lakhs per acre vide offer letter dated 06.12.2014 and therefore this fact only suggests that there was no possibility of buying the land worth Rs. 83,25,00,000/- for Rs. 130.42 crores. VI. All the sellers of the land had specifically denied the receipt of any on-money consideration on the sale of subject lands on the cross examination and the declaration of Rs. 11.9 crores u/s.

132(4) of the Act was only with an intention to buy peace with the Department.

13. The Ld. Assessing Officer after extracting the reply furnished to the show cause notice while reiterating his earlier findings, had proceeded with the framing of the assessment order by making addition in the hands of Thakker group of company, in proportion to the land purchased by the Thakker group of companies Accordingly, the addition of Rs. 14, 10,00,214/- was made in the hands of appellant herein for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15.

14. Accordingly, an amount of Rs. 10,06,60,653/- was taxed for the year under consideration vide assessment order dated 30.12.2016 passed u/s 143(3) r.w.s. 153A of the Act.

15. Being aggrieved by the assessment order, an appeal was preferred before the Ld. CIT(A), who vide his impugned order dated 27.06.2017 had partially granted relief to the appellant by confirming the addition to the extent of amount admitted in the statements recorded u/s 132(4) of the Act by Kokani group and granted relief in respect of balance of Rs. 65,21,25,992/- in the entire group of companies. Thus, the appeal filed by the assessee came to be partially allowed by the Id. CIT(A). The relevant findings of Id. CIT(A) were paras 6.7 and 6.8 of the order of Id. CIT(A), wherein the Ld. CIT(A) summarized as under.

a) The version of the Assessing Officer that Kokani group of companies have started receipt of on-money consideration in cash two and half years prior to the agreement of purchase i.e. 01.07.2013 is unbelievable. b) There is no incriminating material found in the premises of the

appellant or its group of companies as a result of search and seizure action. c) The sale consideration paid by the assessee and his group of companies is ten times higher than the Ready Reckoner value and the appellant company itself has offered the same land to MIDC for Rs.90 lakhs per acre vide offer dated 06.12.2014 and in view of this, the Assessing Officer's finding that the appellant group of companies bought the land at Rs. 141 lakhs per acre in 2013 does not hold water.

16. Based on this finding, the Ld. CIT(A) deleted the addition in the hands of Thakker group of companies of on-money consideration except Rs. 11,94,90,700/- which was admitted by Kokani group u/s 132(4) of the Act. The Id. CIT(A) also deleted the addition made for the assessment years 2011-12 and 2012-13, as the seized material does not indicate any payment of on-money consideration during period relevant for those assessment years. Thus, the Ld. CIT(A) confirmed the addition in the hands of appellant only to the extent of Rs.2,58,20,476/- i.e. 0.2162% of Rs. 11,94, 19.700/- for A. Y. 2014-15. Being aggrieved by that part of the order which is against the assessee, the appellant is in appeal in IT(SS)A No.65/PUN/2017 and the Revenue is in appeal being aggrieved by that part of CIT(A) order which is against the Revenue in IT(SS)A No. 69/PUN/2017.

17. Now, we shall take up the appeal of assessee in IT(SS)A No.65/PUN/2017.

18. The appellant raised the following grounds: 1. The learned CIT(A) erred in upholding the initiation of legally untenable proceedings u/s 153A and in issuing legally untenable Notice u/s 153A in absence of any incriminating material or unexplained asset found during search

action at 7, Thakkers, Near Nehru Garden, Nashik 422001 Therefore, it is prayed to annul the assessment order, passed u/s 153A in the case of appellant.

2. In the facts of the case, evidences on record, submissions made & case law relied, the learned CIT(A) erred in holding that, 'onmoney' aggregating to Rs. 11,94,19,700/ was paid by all the Purchasers of agricultural land at S. Nos.53/2, 54 & 55 of Savargaon, Tal & dist: Nashik & appellant's share therein amounted to Rs.2,58,20,476/-, giving rise to the unexplained investment liable for taxation in the hands of appellant for A. Y. 2014-15 at Rs.2,58,20,476/- Therefore, it is prayed to cancel the addition on account of unexplained investment of Rs.2,58,20,476/

19. The ground of appeal No. 1 challenging the legality of Notice u/s 153A was not pressed during the course of hearing of appeal.

20. The ground of appeal No.2 challenges the findings of Id. CIT(A) confirming the addition to the extent of Rs 2,58,20,476/- restricting the addition to the extent of disclosure of income. u/s 132(4) by Kokani group for the assessment year under consideration on account of alleged receipt of on money consideration stated to have been paid to Kokani group of companies on purchase of subject land.

21. Admittedly, the addition was confirmed by the Ld. CIT(A) based on the statement given by Kokani family members u/s 132(4) of the Act during the course of search and seizure proceedings in their premises.

22. The Ld. AR submitted that the fact that Kokani group admitted additional income in the application filed before the Settlement Commission is neither conclusive nor has any impact on the

assessment of income in the hands of buyers of the property as the disclosure should have been made by the vendors to suit their agenda i.e. minimizing the tax liability by offering the amount as long term capital gains. It is submitted that the family members of Kokani group have also indulged in several land transactions for the last six years. The Ld. AR also submitted that the vendors of properties ie. Kokani group have denied receipt of any on money on cross-examination. Thus, it is submitted that there was no conclusive evidence on record to establish the payment of on-money consideration, therefore, no addition can be made based on the presumptions, assumptions, conjunctures, etc. Finally, it is submitted that the findings of the Settlement Commission in the hands of vendors is not binding in the hands of buyers of the land, reliance in this regard was placed on the decisions of CIT Vs. Vineeta Gupta (2014) 46 taxmann.com 439 (Del) and P.G. Foils Ltd. Vs. Income-tax Settlement Commission (2008) 302 ITR 331 (Mad).

23. In rejoinder, Ld. CIT-DR placing heavy reliance on the orders of assessment as well as Ld. CIT(A), submitted that the statement recorded by the Department from Kokani group u/s 132(4) of the Act is an established factum of payment of on-money consideration and the Kokani group of people have no other source of income except the sale of subject lands to the appellant group of companies. It is submitted that the statement recorded u/s 132(4) of the Act read with seized material are conclusive proof of payment of on-money consideration at the time of purchase of the subject lands. Thus, he prayed to uphold the addition as confirmed by the Ld. CIT(A).

24. We have heard the rival contentions and perused the record. The only issue in

the present appeal relates to the addition of Rs.2,58,20,476/- based on the statement given by third party namely Kokani group of companies during the course of search and seizure proceedings in their hands u/s 132(4) of the Act. Admittedly, no incriminating material suggesting the payment of on-money consideration to the vendors of the subject land was found as result of search and seizure action in the hands of appellant herein. We are conscious of the fact that for the purpose of assessment to tax for the assessment year under consideration, the incriminating material found as a result of search and seizure action has no relevance, as there is abatement with regular assessment proceedings, therefore, the addition, if any, need not be based on incriminating material found as result of search alone. All other evidence which is gathered by the Assessing Officer as a result of enquiries conducted by him can also be considered in regular assessment along with material found as result of search and seizure action. However, the additions, if any, can be made only based on the conclusive evidences brought on record by the Assessing Officer

25. From the perusal of assessment order as well as Ld. CIT(A)'s order, it would suggest that the addition of Rs. 2,58,20,476/- was made/confirmed merely based on the statement given u/s 132(4) of the Act by the vendors of the property i.e. Kokani group that they received on-money payment of Rs. 11,94,19,700/- on sale of lands.

26. We perused the copies of statement recorded u/s 132(4) of the Act from the vendors of the property. The same are placed at pages no.292 to 400 of the Paper Book filed by the appellant. The statements were recorded on 08.09.2015 u/s 132 of the Act during the course of

search and seizure operation in the case of Kokani group. The statements were recorded from following persons. (1) Mr. Fakruddin Sallauddin Kokani (i) Ms. Farzana Sallauddin Kokani (ii) Ms. Noorbano Sallauddin Kokani (iv) Mr. Aijaj Kutubuddin Kokani (v) Mr. Tamizoddin Faridoddin Kokani (vi) Mr. Imran Iftekhar Kokani (vii) Nooruddin S. Kokani (viii) Moinuddin Ziauddin Kokani (ix) Mr. Rehana Tamizuddin Kokani (x) Mr. Gulam Gaus Kokani

27. The abovementioned persons undoubtedly have stated that they received on money receipt over and above the consideration stated in the sale consideration on sale of Savargaon land. However, it is significant to note that they never mentioned the name of the Thakker group nor find place anywhere in seized material.

28. We find from the record that the Thakker group of companies including the appellant were afforded an opportunity to cross-examine the vendors. During the course of such cross-examination, all of them categorically stated that they have not received any on-money consideration on the sale of Savargaon land from Thakker group and it was further stated that the additional income was offered only in order to buy peace of the Department. The statements of cross-examination were placed at page nos. 256 to 264 of the Paper Book filed by the appellant.

29. The vendors also filed an affidavit stating that the declaration of additional income was made only with an intention to buy peace of the Department and avoid further litigation and also denied the knowledge of receipt of the on-money consideration as the subject transaction of sale of land to Thakker was negotiable by two of the deceased family members

namely, Moinuddin Ziauddin Kokani and Imran Iftekhar Kokani. The said affidavits were placed at page no. 265 to 291 of the Paper Book.

30. In the above factual backdrop, we are required to evaluate the evidentiary value of the statement given by the vendors u/s 132(4) of the Act during the course of search and seizure action in their premises. As stated (supra), there are clear contradiction in the statements given by the vendors. It is settled position of law that the contradictory statement has no evidentiary value and reference in this regard can be made to the decision of Hon'ble Supreme Court in the case of *Dhirajlal Giridharilal vs. CIT*, 26 ITR 736 (SC).

31. Furthermore, during the course of search and seizure action in the premises of the appellant group, no incriminating material was found suggesting the payment of any on money consideration. It is also settled position of law that no addition can be made the merely based statement u/s 132(4) of the Act by third party in the absence of any incriminating material on record and reference can be made to the decision of Hon'ble Gujarat High Court in the case of *PCIT vs. Kunvarji Commodities Brokers Pvt. Ltd.*, 432 ITR 150. In the light of the above discussion, we are of the considered opinion that the mere statement given by the vendors of the land u/s 132(4) of the Act, cannot form basis for making any addition in the hands of appellant.

32. Another important factor to be considered is the fact that the vendors had admitted equivalent additional income to the amount stated in the sale deed as the additional income. Undisputedly, the vendors of the properties i.e. Kokani group had disclosed additional income of Rs.65,21,25,992/- as

additional income in the application filed before the Settlement Commission stated to be on account of sale of lands. It is significant to note that on perusal of page no. 14 order dated 17.07.2018 passed by Settlement Commission in the case of Kokani group, it is clear that though they offered additional income of Rs. 65,21,25,992/- an amount of Rs 52,34,32,696/- was claimed as deduction u/s 54, this fact casts doubt and bonafides on the part of Kokani group in offering additional income.

33. Therefore, the question is whether abovementioned facts can form the basis to form an opinion that the appellant made an undisclosed investment in the purchase of property in the form of payment of on-money consideration. The answer is "No". It is trite law that a finding in the assessment of one person is not conclusive in the assessment of another person in view of the settled position of law that material gathered in the assessment proceedings of one person is not legal evidence in the assessment of another person. Reference can be made to the decision of N. S. Choodamani vs. CIT, 35 ITR 676 (Kerala). The assessment of each person is separate and distinct and an addition is to be made only on the basis of independent corroborative evidence, brought on record by the Assessing Officer. It is trite law that the assessment is final and conclusive between parties and only in relation to assessment for the financial year for which it is made. Reference can be made decision of Hon'ble Supreme Court in the case of M.M. Ipoh & Ors. vs. CIT, 67 ITR 106 (SC).

34. This is underlying principle in the decision by Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd vs. CIT, 243 ITR 83, wherein the Hon'ble Supreme Court after referring to the earlier

decision in the case of Smt. Taradevi Agrawal, 88 ITR 323 held that merely because of an assessment of income in the wrong hands is not bar to assess the same income in the right hands and failure by the Assessing Officer to assess the income in the right hands renders the assessment order erroneous.

35. Further, we notice that both Assessing Officer as well as CIT(A) misdirected themselves by applying presumption u/s 132(4A) of the Act. The provision of section 132(4A) incorporates the rule of evidence relating to material found during course of search. On plain reading of said provision, it is evident that it has application in the case of searched person. in whose hands the material was found and seized. The presumption envisaged under said provision cannot be extended to assessment of third party. The CBDT also recognized the principle that no addition can be made on mere statement made u/s 132(4) without bringing any corroborative evidence. The CBDT Circular reads as under : "Admissions of undisclosed income under coercion/pressure during search/survey - Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assessee's were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light. 2. The Board has emphasized upon the need to focus on gathering evidences during Search/

Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence-Letter [F.No. 286/98/2013-IT (INV.II)], dated 18-12-2014.

36. In the present case, the additions are made merely based on statement of third parties without bringing on record any corroborative evidence. No such addition can be made in the light of above discussed legal position.

37. The Hon'ble Supreme Court in the case of P.V. Kalyanasundaram, 294 ITR 49 (SC) in a case involving the identical facts wherein the vendors of the property admitted additional income in the original return of income and it was held that in the absence of any corroborative evidence in the hands of the buyers, no addition can be made. No doubt, the fact that the vendors had admitted additional income on-money on sale of land before the Settlement Commission though rises suspicious. Ipso facto, cannot form basis of addition in the hands of third person in the absence of any independent corroborative evidence. As held by the Hon'ble Supreme Court in the case of CIT vs. Daulatram Rawatmull, 53 ITR 574 even the circumstances raises suspicion, suspicion cannot take place of the evidence. That apart, the contentions of the appellant i.e. the assessee that the vendors had declared additional income only in order to escape the rigouts of the law to claim the benefits u/s 54 of the Act remains uncontroverted. Therefore, we are of the considered opinion that the fact that the vendors had disclosed additional income on account of sale of land as additional income before the Settlement Commission cannot form any basis for the addition in the hands of the appellant herein.

38. In the light of the above facts and legal position, we are of the considered opinion that the Department had failed to establish that the appellant had paid any on-money over and above stated consideration of the sale deed to the vendors of the property at the time of purchase of Savargaon land. Therefore, no addition can be made on the mere statement given by the third party. Therefore, the orders of the lower authorities are reversed, we direct Assessing Officer to delete addition of Rs.2,58,20,476/- for the assessment year under consideration.

39. In the result, the appeal of the assessee stands allowed.

Revenue's Appeal:

40. Being aggrieved by that part of the order of the Id. CIT(A) which is against the Revenue, the Revenue is in appeal before us.

41. The Revenue raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 10,06,60,053/- made by the AO for A.Y.2014-15 in the case of the assessee without appreciating the facts that the addition made by the AO are based on the strong corroborative evidences in the form of the seized materials with logical and justifiable reasons to arrive at the addition of Rs. 10,06,60,053/- pertaining to the assessee in the A.Y.201415 out of the total undisclosed cash transaction worked out at Rs.65,21,25,992/- in respect of the land dealing of the Savargaon plots of land by Thakker Group. 2. On the facts and in the circumstances of the case and in law the

Ld. CIT(A) has erred in rejecting the working of addition made by the AO on the basis of his findings that the members of Kokani family involved in sale transaction of Savargaon land have received 50% consideration in cheque and 50% in cash showing unaccounted cash amount of Rs.65,21,25,992/- which is including the amount of Rs. 11,94,19,700/- declared by the Kokani Group initially in the statement u/s 132(4) in the search action on the premises of Kokani Group. 3. Any other ground that may be urged at the time of hearing."

42. From the perusal of the assessment order, it is clear that based on the notings found in the loose sheets seized and found in the case of Kokani group of people, Mr. Asif Nizamoddin Kokani, Mr. Fakruddin S. Kokani, the Assessing Officer inferred that the respondent assessee had paid on-money consideration to the vendors of the property of subject land. Accordingly, the addition in proportion to the purchase of land made by the respondent assessee was made in the hands of the respondent assessee. As stated by us (supra), the Id. CIT(A) had confirmed the addition in the hands of the purchaser of the property i.e. respondent assessee only to the extent of amount declared under 132(4) of the Act by the vendors of the property i.e. Kokani group. The balance of addition was deleted by the Id. CIT(A) by holding that there is no material on record which could be linked to the respondent assessee showing the payment of on-money consideration. The notings found in the seized material in the case of some of the vendors only shows incurring of some expenditure by the vendors of property, the contents of loose sheet does not lead to the conclusion that this expenditure was incurred out of the money paid by the respondent assessee. In the absence of any corroborative evidence and taking note of the fact

statement given by vendors on cross examination, the Id. CIT(A) gave finding that none of these parties had admitted to have received any on-money from the respondent assessee or its group companies. The Id. CIT(A) also took note of the fact that the agreement of purchase was made only in July, 2013, there is no possibility of making cash payment prior to that date to the tune of Rs.21 crores and also the apparent consideration was 10 times higher than ready reckonor, therefore, the Id. CIT(A) ruled out possibility of paying over and above the stated consideration and, accordingly, held that the presumptions drawn by the Assessing Officer that the respondent assessee would have paid on-money consideration cannot be justified and, accordingly, deleted the additions.

43. Being aggrieved, the Revenue is in appeal before us.

44. It is contended on behalf of the Revenue that the vendors of the subject land have admitted additional income before the Hon'ble Settlement Commission to the tune of Rs.65 crores in the application equivalent to apparent consideration. In support of this he also filed the order of the Hon'ble Settlement Commission, copy of the proceedings before the Hon'ble Settlement Commission, as well as, the statement of computation of total income of all the vendors. It was further submitted that the vendors offered additional income as undisclosed capital gains on sale of lands. He further submitted that the vendors have not indulged any other sale of the land transactions except with the respondent group. He further contended that the presumptions drawn by the Assessing Officer are based on the material found in the case of vendors.

45. On the other hand, Id. AR submitted that the seized material does not indicate that the expenditure incurred by those parties was met out of the on-money consideration paid by the respondent. Further, the seized documents is non-speaking one and dumb and does not convey anything as to the true nature of the transactions. Just because of fact that one of the vendors i.e. Mr. Tamizoddin Faridoddin Kokani had failed to appear before the Assessing Officer in response to the summons issued u/s 131 of the Act, does not enable the Assessing Officer to draw the adverse inference against the respondent assessee. He further submitted that from the seized material found and seized from the premises one Mr. Nizamuddin Faridoddin Kokani it is clear that the vendors are also engaged in the land deals other than the subject land. Finally, he submitted that on the cross-examination, all the vendors had categorically denied having received any on-money on sale of subject land from the respondent assessee or group of companies.

46. He further submitted on the cross-examination, all the vendors had confirmed the reasons for declaring of additional income is out to buy peace with Department. He further submitted that none of the seized papers found and seized from the premises of the vendors can be called a document as there were not part of the account books and loose sheets cannot be treated as part of the regular books of account and not admissible u/s 37 of the Evidence Act as evidence placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. V. C. Shekhal 1993 SCC 410. Thus, he submitted that the seized material in the form of loose sheets cannot form the basis of addition in the assessee's hands. He also submitted that mere fact that the additional income was

offered in the hands of the vendors before the Hon'ble Settlement Commission does not mean that the addition is called for in the hands of the purchaser of the land as the finding in the assessment of one person is neither decisive nor is binding on another person in the absence of any corroborative evidence.

47. We have head the rival submissions and perused the material on record and carefully gone through the orders of the lower authorities. The issue in the present appeal of the Revenue centres around the factual matrix of seized material in the case of vendors of the property 1.0. 3 parties. The Assessing Officer had presumed that based on the material found and seized from the premises of the vendors of the land received on-money consideration from the respondent assessee and in its group companies in connection with the purchase of land at Savargaon. The question therefore which requires to be decided by us is that whether or not the Assessing Officer is justified in drawing such conclusion based on the seized material found and seized from the premises of the vendors. The Assessing Officer as well as the Id. CIT(A) had reproduced scanned images of the seized material which form the basis of the addition in the assessment. That apart the vendors had admitted before the Hon'ble Settlement Commission, the additional income in the form of undisclosed capital gains on sale of land equivalent to apparent sale consideration mentioned in the sale deed on the sale of Savargaon land. No doubt from the perusal of the seized material, the notings in the form of figures were found and in some cases the notings denotes incurring of expenditure on household items and development of land, and purchase of material by the vendor company.

48. We have carefully perused the seized material of which scanned images were reproduced in the assessment order as well as in the order of Id. CIT(A). One of such seized material is reproduced vide page No.27 of the impugned order vide para 6.7. On mere perusal of the said seized material, it is clear that this document contains some numeric figures on the left side as well as on the right side. Against the figures, finding on the left side of the page, an alphabet "T" was found. From this it cannot be said that the document contains some transactions giving rise to the taxable income nor it indicates any date of any transaction nor does it indicate any names of the parties to the transaction. Therefore, this document cannot be said to be a speaking one, can be termed as "dumb document". So is the case in respect of the document reproduced at page Nos.28, 29 and 30 of the impugned order. The Assessing Officer based on the seized material had concluded that the vendors had incurred expenditure in the form of development, purchase of lands out of on-money received over and above the consideration stated in the sale deed from the buyers of the land i.e. the respondent-assessee herein and its group companies and then proceeded to make addition in the hands of assessee as undisclosed investment on purchase of lands.

49. It is also important to significant note that even the vendors of the land in the statement u/s 132(4) of the Act had only confirmed the receipt of the on-money to the extent of Rs. 11,94,19,700/-altogether. They nowhere stated that they received on-money consideration from the respondent assessee or its group companies on sale of the land. Even on cross-examination also, they had denied to have received any on-money on sale of the subject land from respondent

assessee. On the mere fact that the Department has found certain evidence in the form of loose sheets indicating incurring of certain expenditure on household items and development of lands and purchase of lands etc does not lead to conclusion that the respondent assessee or its group companies had paid on-money consideration, also considering the fact that the seized material indicates incurring of such expenditure much before the date of agreement of purchase f.e. July, 2013, no prudent person would have paid the on-money consideration much before 2 and 2/1 years before date of agreement of sale.

50. It is settled position of law that onus lies upon the Department to collect cogent evidence to corroborate the notings on the loose sheets. The additions cannot be made merely on the basis of notings on the loose sheet papers which are in the nature of "dumb documents" having no evidentiary value. The onus lies on the Department to collect the evidence to corroborate the notings on the loose sheets. In the present case, it is undisputed position that as a result of search and seizure action in the case of respondent assessee and its group companies, no material whatsoever was seized and found indicating payment of on-money consideration at the time of purchase of the lands. Reliance in this regard can be placed on the following decisions: i) Pr.CIT vs. Umesh Ishrani (2019) 108 taxmann.com 437 (Bom)) CIT vs. Atam Valves (P) Ltd. (2009) 184 Taxman 6 (P&H) iii) CIT vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj) iv) CIT vs. C.L. Khatri (2006) 282 ITR 97 (MP) v) Pr. CIT vs. Kamlesh Prahladbhai Modi (2018) 94 taxmann.com 356 (Guj) vi) CIT vs. Shri Girish Chaudhary (2008) 296 ITR 619 (Del) vii) CIT vs. Vivek Aggarwal (2015) 56 taxmann.com 7 (Del) viii) CIT vs. Salek Chand Agarwal (2008) 300 ITR

426 (All) ix) CIT vs. Dinesh Jain (HUF)
352 ITR 629 (Del)

51. We find that the conclusions reached by the Assessing Officer are merely based on presumptions and assumptions without bringing corroborative material on record. It is settled position of law that no addition in the assessment can be made merely based on assumptions, suspicion, guess work and conjuncture or on irrelevant inadmissible material. Reliance can be placed in this regard on the following decisions: 1) Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC) ii) Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC) iii) CIT vs. Maharajadhiraja Kameshwar Singh of Darbhanga (1933) 1 ITR 94 (PC) iv) Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC) v) Umacharan Shaw & Bros vs. CIT (1959) 37 ITR 271 (SC) vi) Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (SC)

52. Recently, the Hon'ble Delhi High Court in the case of CIT vs. Dinesh Jain (HUF), 352 ITR 629 after referring to the decision of the Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC) held that no addition can be made taking into account notorious practice prevalent in the similar trade. The relevant findings vide para 14 and 15 are as under. 14. In Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa (1959) 37 ITR 288, the Supreme Court disapproved the practice of making additions in the assessments on mere suspicion and surmise or by taking note of the notorious practices prevailing in trade circles. At page 299 of the report, it was observed as follows:

"Adverting to the various probabilities which weighed with the Income-tax Officer wemay observe that the notoriety

for smuggling food grains and other commodities to Bengal by country boats acquired by Sahibgunj and the notoriety achieved by Dhulian as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf."

15. *This takes care of the argument of Mr. Sabharwal that judicial notice can be taken of the practice prevailing in the property market of not disclosing the full consideration for transfer of properties. 53. The Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO (1981) 131 ITR 597 (SC) held that the capital gains is intended to tax the gains of assessee not what an assessee might have gained and what is not gained cannot be computed as gain and the assessee cannot fastened with the liability on a fictional income. Similarly, the Hon'ble Supreme Court in the case of CIT VS. Shivakami Co. (P) Ltd. (1986) 159 ITR 71 (SC) held that unless there is evidence that more than what was stated was received, no higher price can be taken to be the basis for making addition. In the present case, we do not find any material on record suggesting the payment of onmoney consideration at the time of purchase of land by the respondentassessee and its group companies. Therefore, it can be said that the Assessing Officer had failed to bring on record any reliable evidence to prove that the respondent assessee had made investment in purchase of lands over and above the stated consideration. Therefore, we do not see any perversity in the findings of the Id. CIT(A) in deleting the addition based on the seized material. The findings given by*

us in relation to the appeal filed by the assessee for the same year also equally holds good in respect of present appeal and therefore, we do not find any merit in the appeal filed by the Revenue and we dismiss the appeal. Accordingly, we dismiss the appeal filed by the Revenue.”

10.6. The facts of the instant appeal are mutatis mutandis similar to the aforesaid case decided by the Hon'ble ITAT. Hence, respectfully following the view taken hereinabove by the Hon'ble Tribunal in the case of another co-owner, the addition made by the AO on account of on-money payment in AY 2011-12 is directed to be deleted. The Ground No. 5 to 9 is accordingly Allowed.

10.7. Material facts remain the same for rest of the AYS being A.Y. 2012-13, 2013 14 and 2014-15, so far as addition on account of on-money payment is considered. The AO is, therefore, directed to delete the addition for the aforesaid assessment years as well in view of the above decision for AY 2011-12. The grounds no.5 to 8 for these assessment years are also Allowed accordingly.”

015. Thus the crux of the matter is that the learned CIT – A allowed the appeal of the assessee by following the order of the coordinate bench in the case of the other co-owners which were decided on the same set of facts and the same transaction involving same seized material. Therefore, aggrieved with that order, the learned Assessing Officer is in appeal before us.

016. The learned Departmental Representative submitted that though the learned CIT – A has followed the order of the coordinate bench in case of another CO-buyer where, the

identical addition were deleted but vehemently supported the order of the learned AO. He submitted that this issue though pertaining to the same set off transactions, with same set off purchasers, on the same set of seized material, decided in the case of other co-owner by the co-ordinate Bench in favour of the assessee, but, it cannot be said to be covered for the reason that the order of the Tribunal of Pune Bench suffers from severe infirmities. He therefore submitted that the learned CIT – A has erred in following the same order. The learned Authorized Representative submitted that :-

- i. that the decision in the case of Dhananjaya marketing private limited which is been followed by the learned CIT – A has observed that no incriminating material is related to the case payment was found in the case of search action. He therefore referred that the para number 5.7 and 5.8 of the assessment order in the case of Thakker Grih Nirman private limited deserves to be considered.
- ii. The coordinate bench in case of Dhananjaya marketing private limited has held that no incriminating material was found and therefore the Section 132 (4A) is not applicable. The assessment order in case of these assessee is a completed u/s 153C and not 153A of the income tax act on the basis of the documents seized in the premises belonging to the seller, therefore the observations of the coordinate bench may not be applicable in the present appeal



- iii. the fact of the issue of land being offered to MIDC as been discussed in paragraph number 5.3 of the assessment order.
- iv. The coordinate bench has held that mere mention of letter "T" in the document does not indicate the name of the appellant (assessee) "Thakker" which is with respect to only one single document. He submitted that the learned assessing officer has scanned and reproduced the seized documents bearing the name "Thakker " and "Savargaon Land" at various pages of the assessment order. This has been not been discussed.
- v. As the seller has filed an application before the settlement commission on 27/12/2017 wherein the assessment order in the case of Dhananjaya marketing Ltd was passed on 30/12/2016 stop the order in the case of Dhananjaya marketing Ltd was passed by the learned CIT - A on 27/6/2017 and therefore the AO or the CIT - A in the case of Dhananjaya marketing private limited did not have the benefit of information of the disclosure made by the seller before the settlement commission. In the present case the assessment orders were passed on 30/12/2018 and the order of the settlement commission u/s 245D (4) was passed on 17/7/2018. Therefore the disclosure accepted by the settlement commission of ₹ 65.21 crores as cash received in the sale of land by the seller requires to be considered

vi. though the coordinate bench considered the decision of the settlement commission but has cast doubt on deduction claimed u/s 54F of the act however same cannot be viewed adversely.

017. Therefore, it was submitted that the learned CIT – A has merely followed the appellate orders in the case of Dhananjaya marketing private limited without appreciating that the said assessment orders in these cases been passed Under different sections by different officers on different dates with different set of facts. Therefore, it was submitted that though the order of the CIT – A follows the order of the coordinate bench in the case of another Co buyers, but same cannot be followed in the case of the assessee.

018. The learned Authorized Representative at the time of commencement of hearing stated that these appeals are covered in favour of the assessee by the decision of co-ordinate Bench in case of Dhananjay Marketing Pvt. Ltd. ITSSA no. 65/Pun/2017 for A.Y. 2014-15 dated 19th May, 2021 as well as in the order of Asian Food Products Limited ITSSA No. 64/Pun/2017 for A.Y. 2014-15 vide order dated 21st June, 2021. He submitted that the learned CIT – A has followed these decisions. The learned Authorized Representative stated that the purchaser of the property in question, is one of the co-owners and Dhananjay Marketing Pvt. Ltd. and Asian Food Pvt. Ltd. are also amongst other co-owners. He therefore submitted that if the issue has already been decided by the coordinate bench in the case of one of the co-owners on the same set off documents from same set off purchasers and on the same transaction, there is no reason for the Tribunal to take a different view in the case of this assessee. In this regard, he submitted that the issue is squarely covered in favour of the

assessee. He therefore submitted that when the learned CIT – A has followed the order of the coordinate bench in case of another co-owner to decide the case in favour of the assessee, there is no infirmity in the order of the learned first appellate authority.

019. The learned authorised representative further filed a paper book containing 302 pages. He referred to the page number 264 of the paper book wherein the statement recorded u/s 132 (4) of Mr. fakruddin Kokani is placed. He referred to question number 12, question number 14 and submitted that in answer to both these questions there is no name or reference of the Thakkar group made by him. He further referred to page number 271 – 279 with the statement recorded u/s 131 of the same person along with two other persons on 13/12/2016 which is in cross examination of these parties in question number 5 there is a categorical denial that any cash payment was received from the assessee or group concerns. It was further confirmed that the entire sale consideration was received through cheques only. The learned that AR further referred the order of the coordinate bench in case of Dhananjaya marketing private limited and submitted that at para number 45 there is a categorical finding of the ITA T that those vendors are also engaged in the land deeds other than the subject land i.e. savargaon land. He further referred to the page number 43 of the assessment order wherein there is a safe space reference of the payment by cheque and there is no mention that whether it any consideration is paid by the assessee on its group concern in cash the specific reference was made to para number 44 of the assessment order and submitted that except at page number 43 and page number 44

there is no other evidences which even refers the name of the Thakker group.

020. On the arguments of the learned departmental representative he submitted that the coordinate bench in the case of the other co-owners i.e. other buyers of the same land covers all these issues. With respect to the offer to the Maharashtra industrial development Corporation for purchase of the above land, he referred page number 220 of the paper book where there is a specific letter dated 30/05/2017 and on page number 221 letter dated 6/12/2014 where the above land was offered for setting up of the industry and to be acquired by MIT C at the rate of ₹ 90 lakhs per acre. He submitted that this rate is almost similar to the cheque payment made by the assessee and therefore the price of the land cannot be more than that. Therefore, on these evidences also it is proved that there is no cash payment made by the buyers.
021. He further submitted that whatever is the disclosure made by the seller's before the settlement commission is not with relation to the cash amount allegedly paid by the assessee and the group concerns. He submitted that this aspect has been considered by the coordinate bench at paragraph number 44 in case of Dhananjaya marketing private limited.
022. He further statement that all the statements recorded of Kokani group family members either u/s 132 of the act or u/s 131 of the act have already been considered by the coordinate bench in the case of the Dhananjaya marketing private limited as well as Asian Food products Ltd.
023. In the end he submitted all the issues covered in the case of the appeal of the learned assessing officer have already been dealt with in case of two joint buyers of the land along with

these assessee by the coordinate bench in case of the decision of Dhananjaya marketing private limited and Asian food products Ltd. As these two decisions have been followed by the learned CIT – A in deciding the appeal is in favour of the assessee, there is no infirmity in the order of the learned CIT appeal.

024. In the rejoinder, the learned departmental representative referred to the statement u/s 132 of the act of Mr. Aijaz Kutubdin Kokani dated 9/9/2015 wherein in answer to question number 10 years categorically stated that all the 13 members who are the owners of the land of Savargaon has received a total consideration of ₹ 33,600,000 in cash over and above the recorded land transaction. Therefore it was submitted that the statement u/s 132 four and preliminary statements recorded u/s 131 of the act are saying that the cheque in case was received from Tucker group of companies for sale of the above land.
025. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also carefully considered the decision of the coordinate bench in the case of other co buyers namely, (1) Dhananjaya marketing private limited in ITA number 65, 67 and 69/PUN/2017 for assessment year 2012 – 13 and 2014 – 15 dated 19/05/2021 and order in case of (2) Asian food products Ltd in ITA number 64, 70, 71 – 73/pun/2017 for assessment year 2011 – 12 to 2014 – 15 dated 21/6/2021. We find that the coordinate bench has considered the above issue and held that that the learned assessing officer has failed to bring on record any reliable evidence to prove that the respondent assessee has made investment in purchase of land over and above the stated consideration.

026. The decision of the coordinate bench in the case of Dhananjaya marketing private limited dated 19/5/2021 is the order, which has been followed in the case of Asian food products private limited. The coordinate bench in para number 5 of the order considered all the loose papers found and seized including the Sata Khat Agreement. It also considered annexure A – 1 item number 4, page number 1 to 76 as well as item number 5 page number 17 of annexure A – 1 which is a loose sheet containing Notings aggregating to the sum of ₹ 85,819,700 and page number 5 in the same annexure which also contains noting aggregating to a sum of rupees to crore 36 lakhs/- being the stained images of these two seats extracted by the learned assessing officer in his assessment order. In paragraph number 7 the coordinate bench also considered the documents seized from the premises of Mr. Tamizzudin Kokani Mark as annexure A item number 1 and 2 where there is a details of the incurring of cash expenses to the extent of ₹ 3.34 crores and development of various lands. This is also reproduced by the learned assessing officer by scanning those documents. The coordinate bench in paragraph number 9 further referred to the documents found and seized from the premises of Mr. Fakruddin S Kokani at annexure A item number 1 – 7 wherein the cash receipt of ₹ 8.58 crores with respect to the sellers. In paragraph number 10 the coordinate bench also referred to the documents seized from the premises of Mrs Rehana Kokani containing total pages 1 – 128 wherein Notings of the title as land expenses were found. In paragraph number 48 the coordinate bench has also dealt with the seized material scanned at page number 27, 28, 29 and 30 of those assessment orders which are similar to the assessment order in case of all the assessees. Therefore, it cannot be said that the

coordinate bench did not consider the seized documents properly.

027. The coordinate bench also considered the statement recorded u/s 132 (4) of the act of the company family as well as the preliminary restatement recorded u/s 131 of the act. The coordinate bench in paragraph number 12 has dealt with such statement. In paragraph number 25 – 26 has considered the statement of the sellers as well as the statement of cross examination wherein all the buyers of confirmed that they have not received any own money consideration on the sale of land from Thakkar group. Further with respect to the disclosure made by them of additional income the affidavit is were filed which were considered in paragraph number 29 of the order that the same disclosure was made with an intention to buy peace and avoid further litigation and also denied the knowledge of receipt of the own money consideration is the subject transaction of sale of land to Thakkar group. It also dealt with in paragraph number 32 with respect to the additional income disclosed by the vendor's before the settlement commission. In view of this the coordinate bench has clearly taken into consideration all the statements of the family members of the Kokani group as well as disclosure made by them before the settlement commission.

028. Further, merely because there is an error in mentioning the date of search in the order of the coordinate bench does not make the findings of the coordinate bench not binding on us. Further merely as the orders were passed either u/s 153A on u/s 153C, the findings of the coordinate bench does not change because the same was rendered after considering seized material, statement of the vendors, disclosure of the vendors before the settlement commission, the statement in cross

examination by the vendors denying receipt of any on money consideration.

029. Thus in the present case, the learned it authorised representative has produced before us 2 orders of the coordinate bench in case of the joint buyers of the property along with the respondent assessee is in this appeal. On the identical facts, same transaction, on the basis of same seized material, on the basis of same statements of the buyer and disclosure made by them before the settlement commission, in those cases of the joint buyers the additions have been deleted. Therefore, those orders become binding on us as there is no change in any of the facts pointed out before us which is a material bearing on the findings given by the coordinate bench. Therefore judicial discipline demands that those judicial precedents is to be followed.
030. Further the Id CIT (A) has followed two decision of coordinate benches in case of two different joint buyers of the same property on the same set of facts, no infirmities can be found therein.
031. Therefore, we respectfully following the decision of the coordinate bench in case of Dhananjaya marketing private limited and Asian Foods products Ltd, confirm the orders of the Id CIT (A) and accordingly all the grounds of appeal are dismissed.
032. Further as the same set of facts also exists in all other four appeals, for reason given therein, confirming the order the orders of the Id CIT (A) in those appeals , we dismiss appeals of the Id AO.



033. In the result all the five appeals filed by the learned assessing officer are dismissed.

Order pronounced in the open court on 22.08.2022.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.08.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai