

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 1554/Ahd/2017 (Assessment Year: 2013-14)  
(Physical hearing)

D.C.I.T., Central Circle-2, Room No. 504, 5 <sup>th</sup> Floor, Aayakar Bhavan, Majuragate, Surat-395001.	Vs.	Shri Gordhanbhai L. Talavia, 6, Mamta park-II, Varachha Road, Surat-395006. <b>PAN No. AAOPP 1831 C</b>
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri H.P. Meena (CIT-DR)
Assessee represented by	Shri Mitish S Modi, CA with Shri Akshay Modi, CA
Date of hearing	15/07/2022
Date of pronouncement	31/08/2022

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A) dated 24/03/2017 for the Assessment year 2013-14. The revenue has raised following grounds of appeal:

*"1. On the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition u/s 69 of Rs. 5,00,000/- on the basis of contention of the assessee that the amount of Rs. 5,00,000/- belonged to M/s Shital Textiles even though there was no credible evidence to prove the said amount belonged to M/s Shital Textiles.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 4,48,88,893/- made on account of undisclosed income even though assessee has not furnished any explanation with documentary evidences regarding the figures mentioned against the name of the assessee on loose papers seized during the course of search.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition even though the onus was on the assessee to prove the notings on the loose paper with documentary evidence.*
4. *On the facts and circumstances of the case, the Id. CIT(A) ought to have upheld the order of the Assessing officer.*
5. *It is, therefore, prayed that the order of the Id. CIT(A) may be set aside and that of the Assessing officer may be restored to the above extent.*

**2. The revenue / assessing officer vide its application dated 12.0.2020 has filed following revised grounds of appeal;**

1. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricting the addition of Rs.7,60,087/- to Rs.2,60,087/- on account of unexplained cash without appreciating the fact involved in this case that the assessee neither during the course of search proceeding nor during the assessment proceeding could explain the source of above cash of Rs.7,60,087/- and only during the appellate proceeding the assessee had imported a fresh plea that Rs.5,00,000/- was received from one M/s Shital Textile.*
2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.4,48,88,893/- on account of undisclosed income without appreciating the fact involved in this case that*

*the assessee neither appeared nor filed any explanation before the A.O during the assessment proceedings.*

3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the above additions without appreciating that the order was passed in this case u/s 144 of the I.T. Act as the assessee neither appeared nor filed details during the assessment proceedings.*
4. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in admitting the submission of the AO and thereafter deciding the facts on its own without providing any opportunity of being heard to the A.O as mandated as per Rule 46A of the Income Tax Rule, 1962.*

*It is, therefore, prayed that the order of the Id. CIT(A) may be set aside and that of the AO may be restored to the above extent*

Brief facts of the case are that the assessee is an individual and was partner in firms namely M.D. Infra Developers, Shital Textile and director in Shital Rayons Private Limited. The assessee filed his return of income for the Assessment Year (AY) 2013-14 on 01/01/2014 declaring total income of Rs. 2,46,870/-. The case was selected for scrutiny. During the assessment, the assessing officer noted that a search action under Section 132 of the Income Tax Act, 1961 (the Act) was carried out in group cases of Dalia Group of Surat on 17/7/2012. The assessee was a part of Dalia Group; therefore, the assessee was also covered in the search action. In the search action, certain documents/accounts/loose papers/materials were seized by the authorised officer. During the assessment, the Assessing Officer further noted that at the residential premises of assessee, a cash of Rs. 8,43,500/-

was found. The assessee was asked as to why such cash should not be treated as unaccounted receipt in the hand of assessee. The assessee explained that he has sufficient cash balance in his cash book on the date of search. The assessee also furnished the details of cash book. Ongoing through the cash book, the Assessing officer was of the view that only cash balance of Rs. 83,413/- on the date of search was available with the assessee. Accordingly, the difference of Rs. 7,60,087/- (Rs. 8,43,500-83,413) was treated as unexplained money under Section 69A of the Ac and added to the income of assessee. The Assessing Officer further also that during the course of search at the residential premises of the assessee, certain loose papers as Annexure-A-2 and A-4 were found and seized. The assessee was asked to explain the source of writing on such seized document. The Assessing Officer recorded that the assessee has failed to submit any explanation, accordingly, a show cause notice dated 27/02/2015 was issued to the assessee. In the show cause notice, the Assessing Officer recorded that on the loose paper seized vide Annexure-A-4 at page No. 25 working of Rs. 4.255 crores is mentioned against the name of assessee. Further some working is also at Annexure A-2 at page Nos. 84, 85, 86, 88 and 95 where the entries is mentioned as Rs. 4.88 crores which includes the working on page No. 25 of Annexure-A-4. The Assessing Officer further mentioned in the show cause notice that the assessee has failed to furnish

any detail with supporting evidence about the working containing in his name and why Rs. 4.88 crores should not be treated as unaccounted income/investment in the hand of assessee. The Assessing Officer noted that the assessee has failed to give any detail. The Assessing Officer in absence of any detail, proceeded under Section 144 of the Act and made further made addition of Rs. 4.488 crores while passing the assessment order under Section 144 of the Act dated 30/03/2015.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A) and filed detailed written submission. Since the assessment for A.Y. 2007-08 to 2012-13 was also completed under Section 153A r.w.s 144 of the Act. The assessee also challenged those assessment orders. The Id. CIT(A) passed the consolidate order for A.Y. 2007-08 to 2013-14. For the A.Y. 2013-14, the assessee filed detailed consolidated written submissions for all years. On the addition on account of undisclosed income of Rs. 4.488 crores, the assessee submitted that the alleged addition is made by the Assessing Officer solely based on dump papers seized vide Annexure A-4 (page No. 25) and Annexure A-2 (page Nos. 82, 85, 86, 88 and 95) without having any corroborative or cogent evidence or material contrary to the explanation given by the assessee in his written submission dated 10/03/2015. There is no signature on the said loose papers nor any narration of payments or receipt for any kind of unaccounted investment or

income nor any indication of any part of books of account or book record. It is merely notings of figurative working of the future project likely to be undertaken by Shital Rayons Private Limited through bank finance wherein the assessee is one of the shareholder/director. The Assessing Officer has not recorded anything in the assessment order contrary to the explanation furnished by the assessee about dump papers vide submission dated 14/3/2015. As a matter of fact, these are just loose papers, unsinged and undated containing notings only and no transaction at all. The Assessing Officer has drawn a flimsy view merely totalling the figures and presumed under Section 132(4A) of the Act that total of Rs. 4.88 crores is the undisclosed income of assessee. Such loose papers are not the books of account nor the authentic documents having any evidentiary value in the eyes of law. Mere seizure of loose or dump papers would not be "*ipso facto*" treated as books of account or other documents which is always rebuttable.

4. The assessee also submitted that the Assessing Officer made addition merely on assumption, presumption which is not tenable under the law. No investigation or enquiry during the assessment, contrary to the explanation and the evidence offered by assessee was made but the Assessing Officer just made imagination and estimated the alleged unaccounted income. There is no independent material to corroborate the addition. The Assessing Officer has not proved with evidence as to how the alleged income of Rs.

4.488 crores were earned by the assessee. Except the dump documents, nothing incriminating material was found and seized by the authorised officer at the time of search. As a matter of fact, the notings on the loose papers demonstrate the projection figurative work which has never been materialized or executed. There is no reference of any debt or loan or investment or expenses. These facts were ignored by the Assessing Officer. The assessee also relied on case laws in the case of CBI Vs V.C. Shukla (1998) 3 SCC 410 and Ishwar Dass jain Vs Sohan Lal AIT 2000 SC 426, Gujarat High Court in the case of CIT Vs Maulikumar K Shah (2008) 307 ITR 137 (Guj), Hon'ble Delhi High Court in CIT Vs Vivek Aggarwal (2015) 56 taxmann.com 7 (Delhi) and Delhi Tribunal in ACIT Vs Sharad Chaudhary (2015) 55 taxmann.com 324 (Delhi Trib).

5. On the other addition of Rs. 7,60,087/-, the assessee contended that the Assessing Officer made addition under Section 69A of the Act. The assessee submitted that he has filed detailed written submission before the Assessing officer vide submission dated 14/3/2015 wherein the assessee has fully and satisfactorily explained with evidence to the nature and source of cash of Rs. 8,43,000/- found at the time of search from the premises of assessee. The Assessing Officer in para 9 of the assessment order has abruptly mentioned that "on going through the cash book of assessee, it is seen that there is only cash balance of Rs. 83,413/- on the date of search" and

difference of Rs. 7,60,087/- was treated as unexplained money. Such action of Assessing Officer was not expected being a quasi-judicial officer. The assessee has explained regarding the cash of Rs. 8,43,500/- and its source vide written submission submitted dated 14/3/2015. The assessee explained that the cash belonged to the partnership firm M/s M.D Infra Developers wherein son of the assessee namely Shri Naresh G. Talavia is one of the partner and partner in firm M/s Shital Textile, wherein the assessee is also one of the partners. There is nothing tangible with the Assessing Officer, contrary to the explanation furnished by the assessee from the date of search but the Assessing Officer treated the cash of the firm (M.D. Infra) as unexplained money of assessee. The assessee further stated that on the day of search, the authorised officer asked to explain the cash of Rs. 8,43,500/-, the assessee replied that the amount of Rs. 5.00 lacs belong to Shital Textile, kept as one of the partner at his residence for the purpose of making salary and wages to the staff and workers. Thus, the authorised officer has not seized the amount of Rs. 5.00 lacs. For balance amount of Rs. 3,43,500/- seized by the authorised officer, it was explained that it was money of flat booking in M.D. Infra Developers wherein son of assessee is partner who kept the money in his residence for safety purpose. The Assessing Officer has rightfully accepted the fact that the flat booking receipt duly recorded in the books of account of M.D. Infra Developers

wherein the Assessing Officer himself treated the amount of cash of Rs. 3,43,500/- as income of M.D. Infra Developers. The Assessing Officer conveniently ignored such fact. The assessee furnished the assessment order of with audited accounts of M/s Shital Textile and M.D. Infra Developer. Based on aforesaid explanation, the assessee submitted that there is no lawful reason to presume that alleged difference of cash of Rs. 7,60,087/- is the unexplained money of the assessee.

6. The Id. CIT(A) on considering the submission of assessee on the addition of Rs. 4.488 crore has held that the Assessing Officer made addition based on loose paper found and seized. The Assessing Officer recorded that page NO. 25 of Annexure-A-4, there is working of Rs. 4.255 crores against which the assessee's name is mentioned. The Assessing Officer also mentioned that on certain page of Annexure-A-2, there are working, and that the assessee has not given any explanation, accordingly, the entire working was treated as unaccounted income/investment by referring the provisions of Section 132(4A) of the Act. The Id. CIT(A) noted that how can mere figures mentioned on the page can be held to be undisclosed income, the Assessing Officer has not given any finding about the nature of noting whether it is of loan or investment or expenditure or sales or just some numbers. The Id. CIT(A) by referring the decision in the case of Shri S.K. Gupta Vs DCIT (1999) 63 TTJ 532 wherein it was held that notings on the piece of paper

do not indicate the actual transaction. The paper in question does not indicate that any transaction had ever taken place because it does not contain any information as to what the nature of transactions and that was, when no evidence has been brought on record to corroborate the allegation that assessee has entered into any transaction or had earned any income or whether any relevancy to determination the income in the hand of assessee. The Id. CIT(A) also relied upon the decision of Hon'ble Delhi High Court in the case of CIT Vs Girish Chaudhary (2008) 296 ITR 619 (Delhi) wherein the Hon'ble High Court relied on the decision of Hon'ble Apex Court in the case of CBI Vs V.C. Shukla & others (supra) wherein it was held that the file containing loose sheets of papers are not 'book' and hence entries therein are not admissible under Section 34 of the Evidence Act. Based on his observation, the Id. CIT(A) held that no addition can be made on the basis of mere surmises and conjectures and the addition is merely based on dump documents found during the search.

7. On the other addition of Rs. 7,60,087/-, the Id. CIT(A) held that during search, statement of assessee was recorded on oath on 17/7/2012, the assessee was confronted with cash found during search in his possession. The assessee in reply to question No. 6 has stated that out of Rs. 8,43,500/-, one Shri Manish Bhai had given him Rs. 5.00 lacs for payment of salary to karigars and remaining is from savings and agriculture. Before

him, it is claimed that Rs. 5.00 lacs belonged to M/s Shital Textiles and remaining amount of Rs. 3,43,500/- from M.D. Infra Developers where his son is the partner. The Id. CIT(A) accepted the explanation qua Rs. 5.00 lacs. However, about remaining amount of Rs. 3,43,500/-, the Id. CIT(A) held that this amount was claimed from savings and now it is claimed as booking amount of M.D. Infra Developers, it is an afterthought. New explanation is contrary to the initial statement. The son of assessee was himself claiming keeping of cash of M.D. Infra Developers of Rs. 2.00 lacs, accordingly, new explanation was rejected. Since only cash balance of Rs. 83,314/- was accepted by Assessing Officer and treated as unexplained, therefore, addition to the extent of Rs. 2,60,087/- (Rs.3,43,500 – Rs.83,413) is upheld. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

8. We have heard the submissions of learned Commissioner of Income Tax/ Departmental Representative (Id. CIT-DR) for the revenue and the learned authorised representative (Id. AR) of the assessee and have also perused the orders of the lower authorities carefully. Ground No. 1 relates to deleting the addition of Rs. 5.00 lacks under section 69. The Id. CIT-DR for the revenue submits that during search at the residential premises of the assessee, cash of Rs. 8,43,500/- was found and on perusal of cash book of assessee, it was only cash balance of Rs. 83,413/- on the date of search.

On show cause the assessee failed to explain the source of cash of Rs. 7,60,087/-. There was no sufficient cash balance in the hand of the assessee. Before, Id CIT(A) the assessee explained that Rs. 5.00 lacks belong to Shital Textile, which was accepted by him. The assessee changed his stand before Id CIT(A). There was consistency in the stand of the assessee. The Id CIT-DR for the revenue prayed to restore the order of assessing officer.

9. In support of ground No. 2, the Id. CIT-DR also submits that during search, certain loose papers as per Annexure A/4 and A/2 were found and seized and the assessee was failed to explain the same. The Id. CIT-DR submits that due to non-submission of details by the assessee after issuing show cause by the competent authority, the Assessing Officer made the addition because the assessee has failed to comply with all the terms of notice issued under sub-section (1) of Section 142 of the Act. The seized documents found from the premises of the assessee and the assessee has accepted the same as these were seized from his premises. The Id. CIT-DR has vehemently supported the order of Assessing officer.
10. On the other hand, the Id. AR of the assessee has submitted that the alleged addition of Rs. 4.488 Core, as made by the Assessing Officer solely based on dump papers seized vide Annexure A-4 (page No. 25) and Annexure A-2 (page Nos. 82, 85, 86, 88 and 95) without having any

corroborative or cogent evidence or material contrary to the explanation given by the assessee in his written submission dated 10/03/2015. The Id. AR submits that there was no signature on the said loose papers nor any narration of payments or receipt for any kind of unaccounted investment or income nor any indication of any part of books of account or book record. It is merely notings of figurative working of the future project likely to be undertaken by M/s Shital Rayons Pvt. Ltd. through bank finance wherein the assessee is one of the shareholder/directors. The Id. AR submits that the Assessing Officer has drawn a flimsy view merely totalling the figures and presumed under Section 132(4A) of the Act that total of Rs. 4.88 crore is the undisclosed income of assessee. The Id. AR of the assessee has also relied on the decisions in the case of CBI Vs V.C. Shukla and Ishwar Dass Jain Vs Sohan Lal AIR (supra). The Id. AR of the assessee also submits that the Assessing Officer made addition merely on assumption, presumption which is not tenable under the law. No investigation or enquiry during the assessment contrary to the explanation and the evidence offered by assessee was made but the Assessing Officer just made imagination and estimated the alleged unaccounted income. The Assessing Officer has not proved with evidence as to how the alleged income of Rs. 4.488 crores were earned by the assessee. Except the dump documents, nothing incriminating material was found and seized by the authorised officer at the

time of search. The Id. AR of the assessee also submits that there is no reference of any debt or loan or investment or expenses. These facts were ignored by the Assessing Officer. The Id. AR of the assessee also relied on the decisions i.e. CIT Vs Maulikumar K Shah, CIT Vs Vivek Aggarwal and ACIT Vs Sharad Chaudhary (Supra).

11. Against the Ground No.1, which relates to the addition sustained to the extent of Rs. 2,60,087/- under Section 69A of the Act. The Id AR for the assessee submits that he had filed detailed written submission before the Assessing officer vide submission dated 14/3/2015 wherein the assessee has fully and satisfactorily explained with evidence to the nature and source of cash of Rs. 8,43,000/- found at the time of search from the premises of assessee. The assessee explained that the cash belonged to the partnership firm M/s Infra Developers wherein son of the assessee namely Shri Naresh G. Talavia is one of the partner and partner in firm M/s Shital Textile wherein the assessee is one of the partners. There is nothing tangible with the Assessing Officer, contrary to the explanation furnished by the assessee from the date of search but the Assessing Officer treated the cash of the firm as unexplained money of assessee. The Id. AR of the assessee also submits that on the day of search, the authorised officer asked to explain the cash of Rs. 8,43,500/-, the assessee replied that the amount of Rs. 5.00 lacs belong to M/s Shital Textile, kept as one of the partner at his residence

for the purpose of making salary and wages to the staff and workers. Thus, the authorised officer has not seized the amount of Rs. 5.00 lacs. For balance amount of Rs. 3,43,500/- seized by the authorised officer, it was explained that it was money of flat booking in M.D. Infra Developers wherein son of assessee is partner who kept the money in his residence for safety purpose. The Assessing Officer has rightfully accepted the fact that the flat booking receipt duly recorded in the books of account of M.D. Infra Developers wherein the Assessing Officer himself treated the amount of cash of Rs. 3,43,500/- as income of M.D. Infra Developers. The Id. AR of the assessee also supported the order of the Id. CIT(A). In addition to the oral submissions the Id AR for the assessee also filed his written submissions on 12/07/2020. The assessee has also filed following documents on record;

- (1) Copy of written submissions filed before CIT(A), with ITR of M D Infra Developers, tax audit report, cash books of M D Infra Developers, copy of assessment order of M D Infra Developers dated 31.03.2015 for AY 2013-14, copy of seizes material,
- (2) Copy of written submissions dated 08.03.2015, 13,03,2015 and 14.03.2015.

12. To support his various submissions, the Id AR for the assessee also relied on the following case laws;

- Common Cause Vs UOI (2017) 77 taxmann.com 245-SC,

- CBI Vs V C Shukla 3 SCC 41 (SC),
- CIT Vs Vimalji Ravjihbai Patel (2017) 10 ITR OL460 GUJ,
- Sheraton Apparels Vs ACIT (2002) 256 ITR 20 Bom,
- Nirmal Fashion Private Limited Vs DCIT (2008) 25 SOT 387 Kol – Trib,
- ACIT Vs Sharad Chaudhary (2015) 55 taxmann.com 324 (Delhi-Trib),
- CIT Vs Anil Bhalla (2010) 322 ITR 191 (Delhi),
- Priyanka Chopra Vs DCIT (2018) 94 taxmann.com 122 (Mum-Trib),
- ACIT Vs Iayer Export (P) Limited(2017) 88 taxmann.com 620 (Mum-Trib)
- Pramod Pandey Vs ACIT (ITA No. 4295/Delhi/2012,
- KP Varghese Vs ITO ( 131 ITR 597 SC),
- Amar Kumari Surana Vs CIT 226 ITR 344 (Raj)
- CIT Vs Denesh jain (HUF) (2013) 352 ITR 629 (Delhi)
- Vinodbhai Shamjibhai Ravani Vs DCIT (2017) 79 taxmann.com 237 Guj.

13. The Id AR for the assessee objected against filing of revised grounds of appeal, vide his objections dated 11.07.2022. In the objections the Id AR for the assessee submits that in revised grounds of appeal the revenue has raised new / additional ground that the Id CIT(A) erred in admitting the submissions of the assessee without providing opportunity to the assessing officer. As this additional ground of appeal was not raised initially and the attempt to file revise ground of appeal is in violation of Rule 11 of Income tax Appellate Tribunal Rule -1963. On merit of the addition, the assessee

has submitted that the Id CIT(A) has given opportunity to the assessee as the submissions before the Id CIT(A) was filed alongwith the appeal memo, which was forwarded to the assessing officer vide notice dated 16.06.2015. And in compliance to the direction of the Id CIT(A), the assessing officer relied to the said notices. Thus, there is no violation of Rule 46A. No new/fresh/ additional evidence was filed before Id CIT(A)

14. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case law relied by the Id AR for the assessee. We find that during the assessment, the Assessing Officer noted during search at residential premises of assessee, a cash of Rs. 8,43,500/- was found. And that on show cause the assessee explained that he has sufficient cash balance in his cash book on the date of search. Ongoing through the cash book, the Assessing officer was of the view that only cash balance of Rs. 83,413/- on the date of search was available with the assessee. Thus, he made the addition of difference of Rs. 7,60,087/- (Rs. 8,43,500-83,413) under Section 69A of the Act. As recorded above before, Id CIT(A) the assessee filed his detailed submissions. The Id CIT(A) after considering the submissions of assessee held that during search action, statement of assessee was recorded on oath on 17/7/2012. The assessee was also confronted with cash found during search in his possession. The assessee in

reply to question No. 6 has stated that out of Rs. 8,43,500/-, Shri Manish Bhai had given him Rs. 5.00 lacs for payment of salary to karigars and remaining is from savings and agriculture. Before him, it is claimed that Rs. 5.00 lacs belonged to M/s Shital Textiles and remaining amount of Rs. 3,43,500/- from M.D. Infra Developers where his son is the partner. We find that Id. CIT(A) accepted the explanation qua Rs. 5.00 lacs, as the assessee stand qua the amount of Rs. 5.00 lacs were same as before the search team. However, for remaining amount of Rs. 3,43,500/-, the Id. CIT(A) held that this amount was claimed from savings, and now it is claimed as booking amount of M.D. Infra Developers, it is an afterthought. The Id CIT(A) held that new explanation offered before him, was contrary to the initial statement and that son of assessee was himself claiming keeping of cash of M.D. Infra Developers of Rs. 2.00 lacs, accordingly, new explanation was rejected. Since only cash balance of Rs. 83,314/- was accepted by Assessing Officer and treated as unexplained, therefore, addition to the extent of Rs. 2,60,087/- (Rs.3,43,500 – Rs.83,413) was upheld and remaining additions were deleted. We find that the Id CIT(A) has granted relief to the assessee on appreciation of the statement recorded during the search action, wherein the assessee has firmly stated that the amount of Rs. 5.00 lakhs belong to Shital Textile, wherein he is one of the partners. No contrary facts or evidence was brought to our notice to take other view;

therefore, we affirm the order of Id CIT(A) on thi issues. In the result, ground No.1 of the appeal is dismissed.

15. Ground No.2 relates to deleting the addition of Rs. 4.488 Crore. We find that the assessing officer made addition of this amount by taking view that that during the course of search at the residential premises of the assessee, certain loose papers as Annexure-A-2 and A-4 were found and seized, wherein the figure of Rs. 4.488 Crore are mentioned against the name of the assessee. And that on show cause the assessee has failed to submit any explanation, accordingly, a show cause notice dated 27/02/2015 was issued to the assessee. The Assessing Officer recorded that the assessee has failed to furnish details and in absence of any details, made addition of Rs. 4.488 crores. As noted above, before Id CIT(A), the assessee filed his written submissions. The Id. CIT(A) after considering the submissions of assessee held Assessing Officer made addition on the basis of loose paper found and seized. The Id. CIT(A) held that how can mere figures mentioned on the page can be held to be undisclosed income. The Assessing Officer has not given any finding about the nature of noting, whether it is of loan or investment or expenditure or sales or just some numbers.
16. The Id. CIT(A) by referring the decision in Shri S.K. Gupta Vs DCIT (supra) wherein it was held that where the paper in question does not indicate that any transaction had ever taken place as it does not contain any information

as to what was the nature of transactions and that when no evidence has been brought on record to corroborate the allegation that assessee has entered into any transaction or had earned any income or whether any relevancy for determination of the income in the hand of assessee. No addition can be made. The Id. CIT(A) also referred the decision of Hon'ble Delhi High Court in the case of CIT Vs Girish Chaudhary (supra) wherein the Hon'ble High Court relied on the decision of Hon'ble Apex Court in the case of CBI Vs V.C. Shukla & others (supra). In V.C Shukla & Others (supra), the Hon'ble Apex Court held that file containing loose papers are not 'books' and hence, entries are not admissible under section 34 of the Evidence Act. The Id. CIT(A) held that no addition can be made on the basis of mere surmises and conjectures and the addition is merely based on dump documents found during the search. We find that the assessing officer has not conducted any separate or independent evidence to bring corroborative evidence to connect the entry in seized materiel as per Annexure-A-2 and A-4. The assessing officer has filed the copy or the original of the seized material before Tribunal of the reasons best known to him. In absence of any corroborative no contrary presumption can be drawn against the assessee on a mere figure on the loose papers, when the assessee right from the beginning contending that is no signature of the assessee nor

there is narration rather it was a figurative figure of working of future project of Shital Rayans Private Limited.

17. The hon'ble Delhi High Court in CIT Vs Vivek Aggarwal (supra) held that where Assessing Officer made addition to assessee's income on basis of a document seized in course of search, in view of fact that document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of Assessing Officer, impugned order of Tribunal deleting addition was to be confirmed. Further hon'ble Jurisdictional High Court in CIT Vs Maulikumar Shah ( 307 ITR 137) also held that mere entries in seized material are not sufficient to prove that assessee has indulged in such a transaction in which 'on money' has been received. Thus, in view of the aforesaid factual and legal position, we are also of the considered opinion that absence of any cogent evidence on record, we do not find any infirmity or illegality in the order passed by Id CIT(A). In the result, ground No. 2 of the appeal is dismissed.

18. Ground No. 3 (revised) is general in nature in nature and needs no specific adjudication. Ground No. 4 (revised) relates to alleged violation of Rule 46A. We find that during first appellate stage no new or fresh evidence was filed by the assessee, except narration of facts. We further find that while restricting the addition under section 69, the Id CIT(A) specifically noted that new explanation offered before him, qua cash of M.D. Infra Developers

of Rs. 2.00 lacs, was contrary to the initial statement and accordingly, new explanation was rejected. No new evidence relied by the assessee is specifically brought to our notice, thus, we do not find any merit in this ground of appeal. In the result, this ground of result is also dismissed.

19. In the result, this appeal of revenue is dismissed.

Order pronounced in the open court on 31<sup>st</sup> August, 2022 in open court and result was also placed on notice board.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 31/08/2022

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

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

By order

Sr.Private Secretary, ITAT, Surat