

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Shri Pramod M Jagtap, Vice President  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1589/Ahd/2017  
Assessment Year 2009-10**

The Dy. CIT, Anand Circle, Anand  (Appellant)	Vs	Shri Saurabhkumar M Gupta, 501, Parijat Apartments, 5 <sup>th</sup> Floor, Nr. Vyayamshala, Loliya Bhagol Area, Anand-388001  PAN: ACKPG9748F  (Respondent)
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**Appellant by : Shri Chetan Agarwal, A.R.  
Respondent by : Shri Shramdeep Sinha, Sr.DR**

Date of hearing : 22-08-2022  
Date of pronouncement : 16-11-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue against order dated 20.03.2017 passed by the Commissioner of Income Tax (Appeals)-4, Vadodara, as against the assessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2009-10.

2. The brief facts of the case is that the assessee is an individual deriving income from salary, business, house property and income from other sources. The assessee filed its Return of Income on 23.03.2010 for the Assessment Year 2009-10 declaring total income of Rs. 3,35,330/-. The regular assessment u/s. 143(3) of the Act was completed on 08.11.2011 assessing the admitted income. Thereafter the case was reopened by issuing a notice u/s. 148 on 18.02.2013, on the ground that during the search action carried on 19.01.2009 certain materials seized from the office premises of Mr. Chirag H. Patel, Proprietor of Chirag Construction, that he received Rs. 1,69,50,000/- on various dates from the assessee and he admitted the same as his undisclosed income. However the assessee has not declared in his Return of Income this amount, which is escaped assessment, therefore the assessment was reopened.

2.1. In response to the notice, the assessee filed the same income as in the original return and sought for reasons recorded for reopening of assessment. During the course of re-assessment proceedings, the statement of the assessee was recorded u/s. 131 wherein he admitted that he has purchased an immovable property Bunglow No. B/18 at Surya Vallay Scheme for a consideration of Rs. 36.50 Lakhs and also filed the Purchase Deed, Land Development Agreement, Construction Agreement and Construction Bills and Money receipts issued by Jeenal Construction. During the assessment proceedings, the assessee requested to supply the certificate copy of documents and

statements relied by the Assessing Officer of Chirag H Patel and also requested to grant opportunity to cross examine Shri Chirag H Patel. However the Assessing Officer has not fully supplied the copies requested by the assessee and completed the reassessment based on the statement of Shri Chirag H Patel and added a sum of Rs. 1,69,50,000/- as the unexplained investment u/s. 69 of the Act and by completing the re assessment and demanding tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals) who deleted the additions by a detailed order as follows:

*3.3.3. On merits, the main contention of the appellant is that the Ld. A.O. has made addition of Rs.1,69,50,000/- by resorting to the Provisions of Section 69 of the Income Tax Act, 1961 by treating the same as "investment through undisclosed sources" merely on the basis of the statement of a third party and some documents which have not been confronted to the appellant and which are neither in the hand writing of the appellant nor signed by the appellant. These contentions of the appellant have not been controverted by the A.O. in the order of reassessment or during remand proceedings. The appellant has also based his arguments on the fact that no enquiry whatsoever, got conducted by the Assessing Officer to prove the allegations included in the "reasons to believe" reproduced supra. This argument is also valid as there is nothing in the order of the A.O. which can prove that he even tried to collect any corroborative evidence before proceeding to make huge addition merely on the strength of the statement of third party and some loose papers which are not pertaining to the appellant. Admittedly, these were seized from the office premises of Shri Chirag H. Patel, Prop, of Chirag Construction. The Assessing officer in his order has placed reliance only on the evidences collected during the search action in case of Shri Chirag H. Patel. On the basis of these evidences, the A.O. contended that assessee entered into transaction with above party for an amount of Rs.1,69,50,000/-. In this context, assessee clearly explained that he purchased house in "Surya Valley" project for total consideration of Rs.36.51 lacs only. Assessee time and again asked the A.O. to supply copy of relevant seized materials & the statement of above party. From the written submissions of the Authorized Representative, it transpires that during assessment proceedings, assessee has sought these vide letters dated 09/01/15, 25/02/15, 19/03/15 & 27/03/15. The copies of these letters were placed before me and were also sent to the A.O. during*

remand proceedings. However, the A.O. never bothered to supply the same to the assessee. Even these are not submitted with remand report. What A.O. has supplied to the assessee is the statement of the assessee himself. The A.O. has observed in para 3 of assessment order that as per office letter dated 16/03/15, assessee was supplied copy of his statements recorded by ITO (Inv) Baroda & DCIT, CC-1, Baroda. Thus, I am in full agreement with the Authorized Representative that the documents demanded by assessee were never supplied & even the A.O. has acknowledged this fact indirectly. The assessee had also demanded cross examination of Shri Chirag H. Patel on several occasions by filing letters in the office of the A.O. which are duly acknowledged by putting stamp with date. In remand proceedings, the A.O. has made a passing reference that the assessee was offered cross examination of Shri Chirag H. Patel during assessment proceedings but the A.O. has not been able to substantiate this in remand report by filing any evidence viz. letter issued to assessee/copy of order sheet giving date for cross examination. No evidence like copy of summon issued to Shri Chirag H. Patel to appear for cross examination is filed before me. I am in agreement with the Authorized Representative that the A.O. has chosen to remain absolutely silent on the contentions of assessee & has made observations in assessment order to suit his purpose for making addition to the income of assessee.

*I have seen the statements of the appellant recorded u/s.131 of the Act on 06/03/2009 by ITO(Inv.), Baroda and on 18/03/2010 recorded by the DCIT, Central Circle-1, Baroda. Both of them have asked questions regarding business transactions with Shri Chirag H. Patel and appellant has given reply which has not been controverted by any of the officers. It is also observed that none of the above two officers confronted the appellant with either (i) seized material found from the premise of Chirag H. Patel or (ii) statement of Chirag H. Patel recorded during the search in which it is alleged that he received undisclosed amount of Rs.1,69,50,000/-. When A.O. started reassessment and supplied copy of "reasons to believe" to the appellant, the appellant started asking for*

- (i) Copies of seized material pertaining to the appellant found from the premise of Chirag H. Patel during the search,*
- (ii) Statement of Chirag H. Patel recorded during the search and*
- (iii) Cross-examination of Sri Chirag H. Patel*

This is evident from the copies of the letters dated 09/01/15, 25/02/15, 19/03/15 & 27/03/15 written by the assessee to the A.O. and properly received in the office of the A.O. However, instead of supplying the requisite documents which was the legal right of the appellant in order to defend his case, the Ld. A.O. has given him the copies of the statements of the appellant recorded u/s.131 of the Act on 06/03/2009 by ITO(Inv.), Baroda and on 18/03/2010 recorded by the DCIT, Central Circle-1, Baroda. Even during the remand proceedings, the A.O. has not provided the copies of the

- (i) Seized material pertaining to the appellant found from the premise of Chirag H. Patel during the search and
- (ii) Statement of Chirag H. Patel recorded during the search.

3.3.4. From the above sequence of events, it is clear without any doubt that the Assessing Officer has passed assessment order in very casual manner and has completely ignored the plea of the appellant to grant him opportunity to defend his case by providing him impugned documents. In this case, the "reasons to believe" are in three para but the order of the A.O. making huge addition of Rs.1,69,50,000/- (para 4 of the assessment order) is only 10-11 lines. Rest of almost 6 pages are faithfully devoted by the A.O. to reproduce the "reasons to believe", provisions of section 147 and "show cause letter" issued to the assessee. Nowhere in the order of the assessment there is any mention of some reliable evidence against the assessee. In show cause letter, the A.O. has referred to the investment in "Surya Valley" bungalow but Ld. Authorized Representative has rightly pointed out that the Ld. Assessing Officer failed to appreciate the explanation offered by the assessee including evidences produced before him about the nature and source of investment for purchase of property, comparison of valuation and rates applicable of similar properties purchased in the vicinity by other buyers, valuation of the property as per Stamp Duty Valuation and such other related aspects while passing order u/s 143(3) of the Income Tax Act on 08/11/2011 which was much after the search action initiated on Shri Chirag Patel on 19/01/2009. In fact documentary evidence regarding house purchased from Jeenal Construction, project promoted by M/s Chirag Construction like dastavej, land development agreement, construction agreement, construction bills and proofs of payment for purchase were also submitted to the Assessing Officer. It has been contended by him that during the reassessment proceedings, the learned Assessing Officer chose to completely ignore the appellant's letter dated 27/03/2015 (Exhibit-1) wherein the source and application of funds deployed for purchase of unit No.18 in Surya Valley Project (purchased from M/s Chirag Constructions) that has been duly accounted for in the regular books of accounts of the appellant and the same has been accepted by the Income Tax Department (in original assessment). Further, the learned Authorized Representative has vehemently contended that the Assessing Officer has not brought out any further material to substantiate his allegation. I am inclined to accept this contention of the Authorized Representative because neither in the order of reassessment nor in the remand report, there is any mention of any such investigation to prove the instance of payment of Rs. 1,69,50,000/- to Chirag H. Patel. The sale deed of the property is registered on the jantri value and there can be no presumption of its value being more than that. Hence, the contention of the appellant that the learned Assessing Officer has made the addition of Rs.1,69,50,000/- merely on surmises, conjectures as well as without any supporting evidences is fully acceptable.

3.3.5. Ld. Authorized Representative has further argued that when relevant materials are not supplied to assessee, no addition can be made to the income of assessee on the basis of such materials. Also it was pointed out in letter dated 27/03/15 that in above two statements of assessee no ambiguity/misconduct was found relating to any extra investment made by assessee. Further, as mentioned above, the Assessing Officer has not provided cross examination of Shri Chirag H. Patel although same was specifically demanded by assessee. The Assessing Officer has not given any reason for not providing cross examination. Also the detailed replies filed by assessee are completely ignored which manifests the capricious, vindictive & arbitrary attitude of Assessing Officer. In view of these facts, no addition can be made to the income of assessee on the basis of statement of Shri Chirag H. Patel. The Authorized Representative has also placed reliance on following decisions of jurisdictional Gujarat High Court & ITAT Ahmedabad Bench in which it is clearly held that if Assessing Officer fails to provide opportunity of cross-examination to assessee, addition cannot be made to the income of assessee on the basis of statement of third party:-

- v) **ACITV. Govindbhai M. Patel-215 Taxman 575(Guj)**
- vi) **CITV. Indrajit Singh Suri-85 CCH 140 (Guj)**
- vii) **DOT V. Mahendra Ambalal Patel - 40 DTR 243 (Guj)**
- viii) **Hitesh B. Patel V. ACIT-47 CCH 48 (Ahd Trib)**

Ratio of above decisions is directly applicable to the facts of instant case & thus, addition is required to be deleted as addition made by Assessing Officer is completely in violation of the principles of natural justice, equity & fair play. In the case of **Hitesh B. Patel V. ACIT in ITA No.2778/Ahd/2012**, the plea of the assessee was as under:-

"5. On the strength of the Hon'ble Supreme Court decision in the case of CBI Vs. V.C. Shukla, (1998) 3 SCC 410, it was contended by the assessee that on the basis of diary recovered from a third party, the prosecution cannot establish the guilt of any person, viz. recipient. The assessee had never acknowledged receipt of any payment from PSP.

His signature is not available either in the diary or in other loose paper. No person would make a huge payment without taking confirmation from other party. The assessee further contended that search was carried out at his premises and nothing incriminating was found, whereas, only survey was conducted at the premises of PSP. According to the assessee how PSP has been managing his affair, the assessee cannot be asked to explain the writing made by him in his diary. The assessee further put reliance upon the following judgments.

- "i) **Kishanchand Chellaram Vs. CIT, 125ITR 713 (SC)**
- ii) **CIT Vs. N. Swamy, 241 ITR 363 (Mad)**
- iii) **CIT Vs. P. V. Kalyansundaram, 282 ITR 259 (Mad);**

**iv)Shankerlal Nabhumal HUF & Ors.Vs.DCIT,80 TTJ (Ahd) 9;**

6. On the strength of the above judgment, it was contended by the assessee that burden to prove, demonstrating the fact that the assessee has received payment was on the Revenue. Merely on the basis of documents found from the premises of a third party in the hand writing of the third party, without any cross-confirmation at end of the assessee, it cannot be assumed that the payment was made to the assessee. The assessee further contended that only statement was supplied to the assessee. PSP was not put to cross-examination, and therefore, statement recorded from the back of the assessee cannot be used against the assessee."

After considering the submissions of the appellant and analysing the legal aspect in great details, the Tribunal allowed the appeal of the assessee. In the present appeal also, it is also not the case of assessing officer that seized materials referred in assessment order are in the hand writing of assessee or that same bears signature of assessee. It was also pointed out during assessment proceedings that there are total 31 units in Surya Valley project whereas, presumption relating to extra payment is drawn in assessee's case only. No reason has been assigned for taking such an astonishing stand. It is thus clear that assessing officer has proceeded to make huge addition of Rs. 1,69,50,000/- merely because notice u/s 148 of the Act was issued on assessee. However, on merits of the case he has grossly failed to give any cogent reason for making such addition to the income of assessee.

3.3.6. The facts of the present case are also identical with the case of Ashokkumar Bhailal Vs. ITO, where ITAT Ahmedabad in ITA 489/Ahd/2005, vide order dated 12/06/2015, deleted the additions made on the basis of a diary written by a third person found at the premises of the third person. It was not written by assessee. The assessee repeatedly asked to bring the author of the diary and give him an opportunity to cross-examine which was not granted. It was held that the department ought to have collected some other corroborative evidences which could establish the payment of moneys. It was further has held that "The evidence collected by the department is not worthy of credence, more particularly in view of the judgment of Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla & others reported in 1998 35 SSC page 410. There is no independent evidence on the record, therefore, we are of the view that addition with the help of this much information cannot be made. We allow all the three appeals and delete the additions." Very recently Hon'ble Supreme Court of India in the case of Common Cause (A Registered Society) Vs Union of India [2017] 77 taxmann.com 245 (SC) has observed that any entry on loose paper or sheet made by third party unilaterally without further corroborative material with respect to the payment has no evidentiary value. Such entries have been held to be prima facie not even

admissible in V.C. Shukla's case. It has been held by the Apex Court as under:-

"16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file containing loose sheets of papers not in the form of "Books of Account" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible.

17. It has further been laid down in V.C. Shukla (supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability."

The Authorized Representative for the appellant has also relied upon the judgment of Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla & Others [1998] 35 SSC (Page 410) wherein it was held that the evidence collected by the Department is not worthy of credence, more particularly in view of there is no independent evidence on the record. The Authorized Representative has argued that addition made with the help of material gathered from the third party alone cannot be sustained in view of this judgement. Here at the cost of repetition it is necessary to point out that in the present case, there is no other material with the A.O. than such third party statement and loose papers which have never been confronted to the assessee. The Assessing Officer has not used any power under the Act to make any enquiry of any sort from any quarter including the person on whose statement he has relied for reopening of the assessment. Thus, the facts of the present case are identical with that of V.C. Shukla (Supra) and Common Cause (Supra).

3.3.7. ITAT, Ahmedabad in the case of DCIT Vs Abhalbhai Arjanbhai Jadeja, ITA No.174, 175 & 176/Ahd/2009 (A.Y. 2003-04, 2004-05 & 2005-06) has also deleted additions on identical facts where the A.O. had relied on third party statements and neither cross examination was allowed to the assessee nor there was any corroborative evidence gathered by the A.O. during assessment as well as remand proceedings. In their order, ITAT has referred to the order of the CIT(A) who adjudicated the matter as under :-

"7. In so far as the second aspect is concerned, I have considered the submissions made on behalf of the appellant. It is an accepted fact that there was no search in the case of the appellant and no document was seized. The seizure was in the case of Vikas Shah. In the circumstances, the decision of the jurisdictional ITAT in the case of Prarthana Construction and Prabhat Oil Mills referred to above are squarely applicable to the facts of the present case. Further, the decision of Hon'ble Supreme Court in the case of V.C. Shuka, supra, is relevant wherein it is held as under: "From a plain reading of s. 34, It is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks; in a negative way, of its evidentiary value for charging a person with a liability. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as "book" for they can be easily detached and replaced"

ITAT, Ahmedabad has decided the issue in favour of the appellant as under :-

"13. In assessment year 2005-06, the facts are slightly different. In this year, the addition of Rs.91.50 lacs was made on account of alleged payment of on money. In this year also, the A.O. was of the opinion that addition of Rs.44.80 lacs is required to be made in respect of payment by Shri Vikas A Shah as dalali/brokerage but since addition Rs.91.50 lacs was made on account of on money, a separate addition of Rs.44.80 lacs was not made in this year. The addition of Rs.91.50 lacs in this year was deleted by Ld. CIT(A) on this basis that except the noting on the reference paper and the statement of Shri Vikas A Shah, there is no other corroborative material/evidence to suggest that the assessee paid on money of Rs.92 lacs. It is further noted by Ld. CIT(A) that Shri Vikas A Shah stated that he is yet to receive Rs.32 lacs from the assessee, which appears to be improbable because no prudent man could leave such a huge amount outstanding when the sale transaction is registered. He further noted that the land was purchased by the assessee and Kantibhai jointly and as per the documents for purchase which is registered with the sub-registrar at a value of Rs.9 lacs and this valuation has not been challenged by the Stamp Duty Authority and, therefore, there is no reason for presumption that the assessee

*has made any payment in excess of the said purchase price of Rs. 9 lacs. Finally, Ld. CIT(A) has deleted this addition by stating that in the absence of any other corroborative evidence and in view of the fact that in the remand proceeding also, no further corroborative evidence have been gathered to justify the addition, the addition cannot be made on the basis of presumption and on the basis of the statement of any third party and particularly when seized document was recovered from third party's premises. Considering all these facts, we are of the considered opinion, no interference is called for in the order of Ld. CIT(A) in respect of the addition made by the A.O. of Rs.91.50 lacs on account of alleged on money payment by the assessee or in respect of addition of Rs.44.80 lacs ultimately not made by the A.O. in respect of receipt of dalali/brokerage by the assessee from Shri Vikas A Shah. Hence, in this year also, we decline to interfere in the order of Ld. CIT(A).*

*On further appeal, Hon'ble Gujarat High Court has affirmed the order of ITAT in Tax Appeal 233/2013, 234/2013 & 235/2013 vide common order dated 03.04.2013. In the case of another co-purchaser namely Kantibhai Revidas Patel, ITAT Ahmedabad in IT(SS) No. 543/Ahd/2010 (A.Y. 2005-06) deleted the addition in following manner :-*

*"5. We have heard rival contentions and gone through the material on record. Ld. A.O. has used third party statement of Vikas A. Shah in framing the assessment. The statement of Shri Vikas A. Shah recorded under Section 131(1A) not under Section 132 of the IT Act on 14/03/2005 and 19/04/2005. The Id. A.O. had used this statement without allowing cross examination of Vikas A. Shah which is against the principle of natural justice. This land had registered document and / the value has been accepted as to correct by registering authority to the charge of stamp duty. There was no material or evidence that any on money was paid by the appellant on the transaction. Ld. A.O. had not referred this land to the DVO for determining the market value on date of registration. The statement given by Vikas A. Shah was self service statement without any supporting evidence. There was no search carried out on the appellant. The seized papers were found in the possession of Shri Vikas A. Shah. The third person evidence cannot be base for addition on the basis of any entries therein. The Id. CIT(A) had also considered following decisions. .*

- I. Prathana Construction Pvt. Ltd. 70 TTJ122 (Ahmedabad)*
- II. Prabhat Oil Mills reported in 52 TTJ 533 (Ahmedabad)*
- III. JaindalStainless Ltd. 9 DTK 345 (ITAT, Delhi)*

*After considering all the facts and legal position of this issue, we do not find any reason to intervene in the order of the CIT(A). Accordingly, we uphold the order of the CIT(A)."*

Hon'ble High Court of Gujarat has again affirmed the decision of ITAT, Ahmedabad in Tax Appeal No. 910 of 2013 vide their order dated 11/11/2013 as under:-

"4.1. It is required to be noted that the order passed by the ITAT in the case of the co-purchaser-Abhalbhai Arjanbhai Jadeja was further carried before this Court by way of Tax Appeal No. 233/2013 and other allied appeals and it is reported that vide order dated 03/04/2013, the Division Bench of this Court has dismissed the said appeal confirming the order of deletion of similar addition in the case of Abhalbhai Arjanbhai Jadeja-copurchaser.

5. In view of the above, when in the case of the co-purchaser, similar addition came to be deleted by the CIT(A), which came to be confirmed up to this Court, it cannot be said that the tribunal has committed any error in dismissing the appeal preferred by the revenue and consequently confirming the order passed by the CIT(A) deleting the addition of Rs.92,00,000/- made on account of unaccounted investment. No question of law, much less substantial question of law arises in the present Tax Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed."

3.3.8, Thus, the case of the appellant is directly covered by the decisions of jurisdictional Ahmedabad Tribunal as well as by the decisions of Hon'ble Gujarat High Court as mentioned in para above. There are several other decisions which support the case of the appellant. In Unique Organisers & Developers (P.) Ltd. v. Dy. CIT [2001] 70 TTJ 131 (Ahd), ITAT, Ahmedabad underlined the legal proposition that the presumption u/s. 132 (4A) would not be applicable to a third party from whose possession such document had not been recovered by the Revenue. In the absence of any evidence of passing of "on money" and the assessee having denied the payment of on money, as it was contested in that case; no addition was called for. Similar view was taken by Gujarat High Court in the case of CIT Vs Maulik Kumar K. Shah [2008] 307 1TR 137 (Guj.). In the case of Kalra Glue Factory Vs Sales Tax Tribunal [1987] 167 ITR 498 (SC), Kishinchand Chellaram Vs CIT [1980] 125 ITR 713 (SC) and CIT Vs SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) it was held that if some statement is to be used against the assessee then it is imperative on the department to give opportunity to the assessee for cross-examination. It is also seen that the facts of the present case are identical with the facts of following three cases:

- (i) ACIT Vs Prabhat Oil Mills [1995] 52 TTJ 533 (AMD.)
- (ii) Jindal Stainless Ltd. Vs ACIT [2009] 120 ITD 301 (Delhi)
- (iii) Prathana Construction Pvt. Ltd. Vs DOT [2001] 118 Taxman 112 (AHD.) (MAG.)

The action of the Assessing Officer in denying opportunity of cross-examining Shri Chirag Patel, despite repeated request made by the assessee, has vitiated the legality of the impugned assessments. In the

*absence of opportunity of cross-examination, it is legally impermissible to rely on the seized documents. The decision of Delhi High Court, in the case of S.M. Aggarwal [2007] 293 ITR 43 (Delhi) is a direct authority on the issue as discussed above. A similar proposition which lays down the law of the land and hence is binding has been enunciated by the Supreme Court in Ramji Dayawala & Sons (P.) Ltd. v. Invest Import AIR 1981 SC 2085.*

*3.3.9. In view of the undisputed facts of the case, remand report of the A.O., judicial decisions cited in para above and the rejoinder filed by the Ld. Authorized Representative of the appellant, it is held that there is no independent evidence, direct or circumstantial, to link the documents seized from the premise of Chirag H. Patel to the assessee. This record does not bear the initials or endorsement of the appellant. The record has not been found at the premises of the appellant. The record does not belong to the appellant. The Department has recorded the statements of the assessee twice who has categorically denied the payment of on money. In the rejoinder filed by the appellant it has been argued that in para 10 & 12 of remand report, assessing officer has incorrectly stated that material & statement was supplied to assessee vide letter dated 16/03/2015. It has been submitted by the A/R that "The assessing officer in remand report has referred to para 8 & 10 of our earlier submissions in which it is contended that when assessee vide various letters asked assessing officer to supply copy of relevant materials seized during the search action in case of Shri Chirag H. Patel & copy of the statement of Shri Chirag H. Patel, A.O vide letter dated 16/03/15, supplied copy of assessee's statements recorded by ITO (Inv) Baroda & DCIT, CC-1, Baroda. Here, the observation in remand report is incorrect because what was given to assessee was the assessee's own statement recorded by above authorities & not the statement of Chirag H. Patel & various annexures which has been made the basis for making, addition in assessee's case. Further, the letter dated 16/03/2015 is reproduced in assessment order & it is evident on perusal of this letter that no such materials were provided with such letter. In fact only statement of assessee was provided. It is thus clear that copy of such materials were never provided to assessee. Now when relevant materials are not supplied to assessee, no addition can be made to the income of assessee on the basis of such materials. The assessing officer has failed to supply copy of the statement of Chirag Patel & various other annexures referred in assessment order even along with remand report. This clearly proves that addition made to the income of assessee is not sustainable.*

*3.3.10. I am also in agreement with the A/R that in para 11 of remand report it is incorrectly observed that assessee did not cross examine Shri Chirag H. Patel as the A.O. has failed to state the date on which specific opportunity was provided to assessee for cross examining Shri Chirag H. Patel. The assessee has repeatedly demanded opportunity of cross examination. However, the same was never provided & the same stands*

*proved as even in remand report, the A.O. has failed to specify the date on which said opportunity was provided to assessee. Unless & until, assessing officer provides opportunity of cross examination, assessee cannot suo-moto avail the same. The action of assessing officer is totally against the principle of natural justice as reliance cannot be placed on materials collected at the back of assessee & copy of which is not supplied to assessee. It appears that the Assessing Officer found various letters of the assessee much too inconvenient to consider and refute it. The studied silence of the Assessing Officer on the supply of seized material and copy of statements of Chirag Patel itself supports the assessee. The misplaced zeal of the Assessing Officer in adopting the "reasons to believe" as the main stay of the department's case for making huge addition without providing copies of the impugned material to the assessee and without allowing him opportunity to cross-examine Sri Chirag H. Patel cannot be upheld. It is also true that no corroborative evidence was collected by the Assessing Officer and no field enquiry was conducted by him before unilaterally proceeding to make huge addition in case of the appellant completely ignoring the judicial decisions on the subject including decisions of jurisdictional Tribunal as well as High Court. Under these circumstances and considering various judicial decisions relied upon by the Authorized Representative and also mentioned by me in above para, the addition of Rs.1,69,50,000/- made by the Assessing Officer is deleted. Thus, the main Ground of Appeal is allowed.*

4. Aggrieved against the same, the Revenue is in appeal before us raising the solitary Grounds as follows:

*1. "The Ld. CIT(A) has erred in law and on facts in deleting the addition for want of cross examination of Shri Chirag H. Patel by the assessee and ignoring the fact that the Assessing Officer made addition on the basis of relevant, cogent and concrete evidence found during the course of search at the business premises of Shri Chirag H. Patel and the same amount, which was received from the assessee was offered for taxation by Shri Chirag H. Patel for the A.Y. 2009-10."*

4.1. The Ld. Sr. D.R. appearing for the Revenue produced before us copies of the seized documents as well as statements recorded u/s. 131 of the assessee, Mr. Chirag H Patel and prayed that the addition made by the Assessing Officer is to be sustained and the revenue appeal is to be allowed.

4.2. Per contra Ld. A.R. Mr. Chetan Agarwal appearing for the assessee submitted before us a Paper Book wherein specific request by the assessee vide letter dated 25.02.2015 and 09.01.2015 which are at page no. 51 to 54 asking for the copies of the statements recorded under 131 of Mr. Chirag H Patel and others, entire Anneuxures in A/3 and A/2 and also grant opportunity to cross examine Shri Chirag H. Patel. However the Assessing Officer has supplied only the copy of the assessee's statement recorded under 131 of the Act on 06.03.2009 and 18.03.2009 and not furnished third party statements namely Mr. Chirag H Patel. Thus the Ld. A.R. relying upon the case laws submitted before Ld. CIT(A) prayed that the findings of the Ld. CIT(A) does not require any interference and thereby requested to dismiss the revenue appeal.

5. We have given our thoughtful consideration and perused the materials available on record including a Paper Books filed by the Revenue and by the assessee and the case laws relied by the assessee. The Ld. D.R. could not produce any material before us that the copies of the seized materials have been supplied by the Assessing Officer to the assessee, which were requested by assessee's letter dated 25.02.2015 and 09.01.2015. Similarly, the Ld. D.R. could not demonstrate before us that proper cross examination of Mr. Chirag H. Patel was given to the assessee by summoning Chirag H. Patel. The seized material referred by the Assessing Officer are neither in the hand writing of the assessee nor does bear any signature of the assessee. It was pointed out by the assessee during the assessment proceedings that there are total

31 units in Surya Valley project which were purchased by various parties, whereas extra on money payment of Rs. 1,69,50,000/- was made only in the name of this particular assessee. The A.O. had not justified for making such an addition in the hands of the assessee with relevant seized materials and by supplying the same to the assessee, thus no addition can be made in the hands of the assessee as held by various judicial precedents. Further the Assessing officer has not provided cross examination of Shri Chirag H. Patel although the same was specifically demanded by the assessee. It is also seen that the replies filed by the assessee are completely ignored by the Assessing Officer, which manifests the capricious, vindictive & arbitrary attitude of the Assessing Officer. Therefore the Ld. CIT(A) after considering the following case laws deleted the addition made by the A.O.:

- i) *Kishanchand Chellaram Vs. CIT, 125ITR 713 (SC)*
- ii) *CIT Vs. N. Swamy, 241 ITR 363 (Mad)*
- iii) *CIT Vs. P. V. Kalyansundaram, 282 ITR 259 (Mad);*
- iv) *Shankarlal Nabhumal HUF & Ors. Vs. DCIT, 80 TTJ (Ahd) 69;*
- v) *ACIT Vs. GovindbhailM. Patel-215 Taxman 575(Guj)*
- vi) *CIT Vs. Indrajit Singh Suri-85 CCH 140 (Guj)*
- vii) *DOT Vs. Mahendra Ambalal Patel - 40 DTR 243 (Guj)*
- viii) *Hitesh B. Patel Vs. ACIT-47 CCH 48 (Ahd Trib)*

5.1. It is further evidenced that there is no corroborative evidence collected by the Assessing Officer and no field enquiry was conducted before making such a huge addition in the hands of the assessee. The A.O. also ignored judicial decisions by the

Jurisdictional High Court. Therefore the findings of the Ld. CIT(A) does not require any interference and the grounds raised by the Revenue does not hold any merits and is rejected.

6. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 16 -11-2022

**Sd/-**  
**(PRAMOD M JAGTAP)**  
**VICE PRESIDENT**  
**Ahmedabad : Dated**

**True Copy**  
**16/11/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद