

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA Nos.48 & 49/SRT/2017

Assessment Years: (2011-12 & 2012-13)

(Physical Court Hearing)

Kalpesh Mafatlal Patel, 71, Suruchi Society, Nr. Shree Nagar, Ghod Dhod Road, Surat-395007.	Vs.	Deputy Commissioner of Income Tax, Central Circle-4, Room No. 508, 5 th Floor, Aayakar Bhavan, Majura Gate, Surat-395002 Assistant Commissioner of Income Tax, Central Circle-4, Room No. 508, 5 th Floor, Aayakar Bhavan, Majura Gate, Surat-395002
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADWPP0405D		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Assessee by	Shri Urvashi Shodhan, CA
राजस्व की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाईकीतारीख/Date of Hearing	11/10/2022
घोषणाकीतारीख/Date of Pronouncement	19/12/2022

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned both appeals filed by the assessee, pertaining to Assessment Years (AY) 2011-12 and 2012-13, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, the issues involved in these two appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this

consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.48/SRT/2017, for assessment Year 2011-12, have been taken into consideration for deciding the above appeals *en masse*.

3.First, we shall take assessee's appeal in ITA No. 48/SRT/2017 for AY.2011-12, (lead case) wherein the grounds of appeal raised by the assessee are as follows:

"1. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs. 12,50,000/- on account of alleged payments made to Chetanbhai Chanabhai & other vide Satakhat Deed dated 09-10-2010 for purchase of land at Bamroli Block No.45 as unexplained investment u/s. 69 of the Income Tax Act.

2. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs.10,00,000/- on account of alleged payments made to Lakhiben Chimanbhai & Others vide Satakhat Deed dated 09-10-2010 for purchase of land at Bamroli, Block No.45 as unexplained investment u/s. 69 of the Income Tax Act.

3. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs.50,00,000/- on account of alleged payments made to Maniben Balabhai & Others vide Satakhat Deed dated 16-08-2010 for purchase of land at Bamroli, Block No.45 as unexplained investment u/s. 69 of the Income Tax Act.

4. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs. 17,50,000/- on account of alleged payments made to Bhaniben Bhanabhai & Others vide Satakhat Deed dated 12.10.2010 for purchase of land at Bamroli, Block No.45 as unexplained investment u/s 69 of the Income Tax Act.

5. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs. 1,00,000/- on account of alleged payments made to Lilaben Dayyabhai & Others vide Satakhat Deed dated 14-03-2012 for purchase of land at Jiav, R.S.No.358/1 & 358/2, Block No.437 as unexplained investment u/s. 69 of the Income Tax Act.

6. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O. in making an addition of Rs.1,00,000/- on account of alleged payments made to Dahiben Parshotambhai & Others vide Satakhat Deed dated 25-10-2011 for purchase of land at Jiav, R.S.No.358/1 & 358/2, Block No.437 as unexplained investment u/s. 69 of the Income Tax Act.

7. The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal."

4. Grounds of appeal raised by the assessee in ITA No. 49/SRT/2017, for A.Y. 2012-13 are as follows:

“1. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O in making an addition of Rs.25,00,000/- on account of alleged payments made to Dahiben Parsottambhai & Others vide Satakhat Deed dated 25-10-2011 for purchase of land at Jiav R.S.No.358/1 & 358/2, Block No.437 as unexplained investment u/s 69 of the Income Tax Act.

2. The learned CIT(A) has erred in law and on facts in upholding the action of the ld. A.O in making an addition of Rs.25,00,000/- on account of alleged payments made to Lilaben Dahyabhai & Others vide Satakhat Deed dated 25-10-2011 for purchase of land at Jiav R.S.No.358/1 & 358/2, Block No.437 as unexplained investment u/s 69 of the Income Tax Act.

3. The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.”

5. Since, all the grounds raised by assessee are inter-connected and mixed, therefore we shall take these grounds together.

6. Brief facts, as per lead case, are as follows: The assessing officer observed that during the course of survey proceedings under section 133A on 27.12.2012 at the office premises of Turmish B. Kania, Advocate and Meera T. Kania, at A Sai Leela Associates, certain documents of incriminating nature were recovered from the office and impounded as BI-1, BI-2, BI-3 & BI-4. It includes backup hard disc of computers installed in the office. On perusal of working copy of the same hard disc, it was noticed that various satakhat/kabja Rashid/sale deed/purchase deed/promisary note/ memorandum of understanding and other documents related to land/property were prepared by Turmish B. Kania and Meera T. Kania. So with an intention to obtain hard copy of the same satakhat purchase/sale deed, Mazhernama of the impounded hard disc was done on 27.02.2013. The print results and purchase/sale deed//Kabja rasids as available in the impounded hard disc were taken. The print results so recovered were impounded as per Annexure A-1, Page Nos.1 to 149, Annexure-A-2, Page Nos. 1 to 32, Annexure-A-3, Page Nos. 1 to 102 and Annexure-A-4, Page Nos. 1 to 154. On perusal of the said files following Satakhat in the name of the assessee was found:

Land Details	Other Party	Date of Satakhat	Cash Payment made through Satakhat
Bamroli, Block Number-155		05.02.2011	Rs. 58,50,000 (Assessee admitted to have made cash payment of Rs. 29,50,000/-)
13.33% share in Bamroli, Block Number-45	Chetanbhai Chhanabhai & Others	09.10.2010	Total land was agreed to be purchased for; Rs.80,00,000/-, out of which Rs. 25,00,000/- were paid in cash.)
13.33% share in Bamroli, Block Number-45	Chetanbhai Chhanabhai & Others	09.10.2010	Total land was agreed to be purchased for Rs.59,50,000/-, out of which Rs. 20,00,000/- were paid in cash.)
66.66% share in Bamroli, Block Number-45	Maniben Zalabhai & others	16.08.2010	Total land was agreed to be purchased for Rs.3,30,30,000/-, out of which Rs. 1,00,00,030/- were paid in cash.)
6.68% share in Bamroli, Block Number-45	Bhaniben Bhanabhai & Others	12.10.2010	Total land was agreed to be purchased for Rs.85,00,000/-, out of which Rs. 35,00,000/- were paid in cash.) :
Jiuav R.S.' Number 358/1& 358/2, Block No.-437	Dahiben Parshottambhai & Others	25.10:2011	Total land was agreed to be purchased for Rs.25,00,000/-, out of which Rs. 1,00,000/- were paid in cash on 19.10.2010 and cash of Rs. 9,00,000/- was paid on 25.10.2010.)
Jiuav R.S. Number 358/1& 358/2, Block No.-437	Lilaben Dahyabhai & others	25.10.2011	Total land was agreed to be purchased for Rs.25,00,000/-, out of which Rs. 1,00,000/- were paid in cash on 19.10.2010 and Rs. 9,00,000/- were paid in cash on 14.03.2031.)
Jiuav R.S. Number 358/1& 358/2, Block No.-437	Bhaniben Bhanabhai & Others	25.10.2011	Total land was agreed to be purchased for Rs.25,00,000/-, out of which Rs. 1,00,000/- were paid in cash on 19.10.2010 and Rs. 9,00,000/- were paid in cash on 25.10.2010.)

7. Being examined on oath, by investigation unit, Surat u/s 131 of the I.T. Act the assessee i.e. Shri Kaipesh Mafatlal Patel has admitted to have made cash payment of Rs.29,50,000/- towards the purchase of land at Bamroli, Block No.155 but has denied to have entered into any such satakhat Turmish B Kania, Advocate who prepared the satakhat categorically admitted that the satakhat was prepared after taking consent of both the parties. Inclusion of the correct; survey numbers/Block numbers of the plot of land and Name(s) and Address(s) of both the parties clearly indicates that the said satakhat was prepared by Shri Turmish B.

Kaniya after obtaining due consent of both the parties. In view of the above facts and findings, the case was re-opened u/s 148 of the I.T. Act for scrutiny.

8.The assessee has filed original return of income for on 26.09.2011 declaring total income of Rs.4,14,477/-. In response to notice u/s 148 issued to assessee on 30.12.2014, the assessee has filed copy of his return of income in response to notice u/s 148 on 13.11.2015 and requested to treat ROI filed on 26.09.2011 as ROI filed in compliance to notice u/s 148. Notice u/s 143(2) was issued for assessee on 13.11.2015 and duly served upon the assessee. Notice u/s 142(1) is issued to assessee on 13.11.2015 and duly served upon the assessee. The assessee was requested to furnish details on 23.11.2015. Further, the assessee has not filed his objection for reopening the case but the reason for reopening was provided to the assessee on 15.12.2015. Further, Assessing Officer given one more opportunity to the assessee by issuing notice u/s 142(1) dated 15.12.2015 to represent his case on 22.12.2015. In response thereto, the assessee attended the hearings from time to time and filed written submissions. After examining the details filed & test checking the details with return income & document furnished, the income returned by the assessee was examined by Assessing Officer as below:

(a) Satakhat deed with Chanabhai Prabhubhat & others dated 09.10.2010 for the land at Moje- Bamroli, Block No. 45, 13.33% share (admeasuring area- 1470.26 Sq.Mtrs):

By notice dated 13.11.2015, assessee was asked following question which is reproduced below:

By summons dated 30/07/2014, you were asked following in Q.(5). Same is reproduced here with:-

"Q 5: The satakhat dated 09.10.2010 for land at Bamroli, Block No.45, for 13.33% of the land owned, out of area 11027 sq. mtrs, by Chetanbhai Chanabhai & others for a consideration of Rs.80,00,000/- This document was **impounded** from office of M/s. A Sai Leela Associates.

Perusal of the satakhat brings forth following facts,

a) Satakhat is dated 09.10.2010.

- b) Satakhat is w.r.t land at Bamroli Block No.45, admeasuring area 11027 sq. mtrs
- c) Kalpeshbhai Mafatlai Patel & Yogeshkuntar Mohanlal Patel are purchaser party.
- d) Chetanbhai Chanabhai & others are seller party (having 13%) share sold for Rs.80,00,000/-.
- e) Cash of Rs.25,00,000/- is paid by Kalpeshbhai Mafatlal Patel & Yogeshkumar Mohanlal Patel on 09.10.2010 to the seller party .

You are required to file following details on a Separate Affidavit:

- i) File name, address, PAN of Chetanbhai Chanabhai & others i.e. all sellers of this land & Yogeshkumar Mohanlai Patel (co-purchaser of the property)
- ii) File details of payment of cash, cheque paid with date w.r.t this deal to each sellers individually i.e. Chetanbhai Chanabhai & others. **File details of share of each seller party in the land.**
- iii) File details of events date wise of
- details of signing the agreement of sale i.e. Satakhat,
 - details of payment of Cash & cheque by each purchaser out of Rs.80,00,000/- .w.r.t this purchase transaction, details of documentation done,
 - details of Sale party wise receipt of Cash & cheque with date & evidence
- iv) File self attested signed copy of
- Satakhat (signed)entered in by you for this property
 - Registered document signed by you for this property
 - any other document w.r.t this land entered in by you & other owners of this land
- iii) File source of cash & cheque payment of Rs.80,00,000/-".

You have not answered the query and not given any evidences of details asked till date. Satakhat is evidence & is signed only when the due amount stated is paid.

You are herewith show caused to explain why Rs.40,00,000/- should, not be treated as unexplained investment in your hand as unexplained investment & balance Rs.40,00,000/-be taxed in your hand on protective basis.

(b) The assessee has filed his submission before the assessing officer. The AO noted that Assessee denied signing any such Satakhat and also denied purchasing of such land. Therefore assessing officer noted that were no merits in the contentions of the assessee.

(c) Thereafter, assessing officer examined relevant statement of the assessee which was given before the DDIT (Inv). Surat on 02.04,2013, is as under:

"I have not made any of these deals. I don't know how these Satakhat were prepared,"

Further, he also gave his declaration on oath that "whatever stated above is true and correct to the best of my knowledge. The above statement has been given by me voluntarily without any coercion, threat, inducement or undue influence. The above statement is given by me. The same has been read by me, explained to me and found to be correct."

9. It was observed by Assessing Officer that Notary register of Smt. Meera Kania w/o Shri Turmish Kaniya should be called for. On perusal of such notary register it was noticed that the assessee has been doing his documentation with Turmish Kania and has notarized many satakhat deeds through Meera Kania (wife of Turmish Kania). The notarization registered shows following documentation of satakhat and notarization at Notary register deed with Meera Kania with signature and thumb impression. A detail of notarization with Meera Kania is as under in her notary register:

Sr. No. of Notary Register	Date	Name of Executants or Person	Contents of Document
300	17.08.2010	Kaipesh Mafatlal Patel and Maniben & 11 others	Satakhat in respect of land at Bamroli, Block No. 45
351	09.10.2010	Kaipesh Mafatlal Patel & Lakhiben Chimanbhai & 09 others	Satakhat in respect of land at Bamroli, Block No. 45
354	16.10.2010	Kaipesh Mafatlal Patel & Bhaniben Bhanbhai & 7 others	Satakhat in respect of land at Bamroli, Block No. 45
124	26.03.2011	Kaipesh Mafatlal Patel & 1 other	Safai Bungalow Row House A/4

10. The Assessing Officer noted that these evidences are direct evidences that assessee has been taken professional services for satakhat documentation with Turmish Kania & Meera Kania. As can be seen from the above table that at Sr. No. 351 on 09.10.2010 the assessee has notarized satakhat with Lakhiben Chimanbhai and nine others for land at Block no. 45 of Bamroli. During the scrutiny preceding an enquiry have been made with the sub registrar office. From the inquiry it has come to notice that land was in possession of Lakhiben Chimanbhai and nine as mentioned in soft copy of satakhat. Therefore assessee's plea that he has not entered in any such satakhat rejected in light of evidences gathered during the assessment proceedings. It is also found during the inquiry that the land in question sold to Taraben Ajitbhai Patel & others by the sellers, Chhanabhai Prabhubhai & others on 18.03.2011 vide Datavej no. 4851. Therefore, role of assessee in transaction cannot be ruled out as per the Satakhat. As a prevailing practice in the market w.r.t to land sale transaction, after the conditions laid in the satakhat is completed by the purchaser, the land is transferred in the name of the purchaser at the rate, which is convenient to the purchaser. The seller save money on account of lower capital gain tax buyer gets the window to invest his unaccounted money and saves tax on lower stamp duty, lower registration cost and no tax on cash / unexplained investment beyond his books of account. The only proof of transaction of unexplained Investment is Satakhat Agreements agreed mutually signed by each other. This document is destroyed after doing the Registration, which destroys any and every evidence of concealed income by the purchaser and beyond books, unexplained Investment made by the purchaser. Assessee's cash book & books of account do not show any such entry of payment. It is held that assessee has done the transaction as

investor. Cash of Rs.25,00,000/- is paid as an advance by Kalpeshbhai Mafatlal Patel and Yogeshkumar Mohanlal Patel on 09.10.2010 to the seller party The half of the advance i.e. the share of assessee of Rs.12,50,000/- recorded as paid by the assessee as per the impounded satakhat is treated as unexplained investment u/s 69 of I.T. Act. Assessee has not shown this investment in his books.

11. By following the same logic and method, the assessing officer made addition in respect of other parcel of lands, as follows:

(i).In respect of Satakhat deed with Lakhiben Chimanhhai & others dated 09.10.2010 for the land at Moje- Bamroli, Block No.45, 13.33% share (admeasuring area-1470.26 Sq. Mtrs.), the Assessing Officer made addition observing that Assessee's cash book and books of account do not show any such entry of payment. It was held that assessee has done the transaction as investor. The Cash of Rs.20,00,000/- is paid as an advance by Kalpeshbhai Mafatlal Patel and Yogeshkumar Mohanlal Patel on 09.10.2010 to the seller party. The half of the advance i.e. the share of assessee of Rs.10,00,000/- recorded as paid by the assessee as per the impounded satakhat was treated as unexplained investment u/s 69 of I.T. Act.

(ii) In respect of Satakhat deed with Maniben Baiabhai & others dated 16.08.2010 for the land at Moie- Bamroii. Block No. 45, 66.66% share (admeasuring area-7351 So. Mtrs.), the Assessing Officer made addition observing that assessee has done the transaction as investor. The Cash of Rs.1,00,00,000/- is paid by Kalpeshbhai Mafatlal Patel & Yogeshkumar Mohanlal Patel on 16.08.2010 to the seller party. The half of the share of Rs 50,00,000/- recorded as paid by the assessee as per the impounded satakhat was treated as unexplained investment u/s 69 of I.T. Act.

(iii) In respect of Satakhat deed with Bhaniben Bhanabhai and others dated 12.10.2010 for the land at Moie-Bamroii, Block No.45, 6.68% share (admeasuring area-736.60 Sq.Mtrs.), the Assessing Officer offer made addition observing that assessee's cash book and books of account do not show any such entry of payment.

It was held that assessee has done the transaction as investor. The Cash of Rs.35,00,000/- is paid as an advance by Kalpeshbhai Mafatlal Patel and Yogeshkumar Mohanlal Patel on 12.10.2010 to the seller party The half of total amount i.e. the share of assessee of Rs.17,50,000/- recorded as paid by the assessee as per the impounded satakhat was treated as unexplained investment u/s 69 of I.T Act.

(iv) In respect of Satakhat deed with Lilaben Dahyabhai & others with assessee dated 14.03.2012 for the land at Jiav. R.S. No.358/1 & 358/2. Block No.437. 4994.50 Sq.Mtr. out of total area admeasuring 9989 Sq.Mtr. and (ii) Satakhat deed with Dahiben Parshotambhai & others with assessee dated 25.10.2011 for the land at Jiav. R.S. No.358/1 & 358/2. Block No.437, area of 832.42 Sq. Mtrs. out of total area admeasuring 9989 Sq.Mtr., the Assessing Officer made addition observing that assessee's cash book & books of account do not show any such entry of payment. It is held that assessee has given an advance of Rs.1,00,000/- on 19.10.2010 to the sellers in respect of land mentioned at para 7(i) and an advance of Rs.1,00,000/- on 19.10.2010 to the sellers in respect of land mentioned at para 7(ii). Assessee has not shown this investment in his books. As the transaction pertains to FY 2010-11, the amount of Rs.2,00,000/- recorded as paid by the assessee as per the impounded satakhat was treated as unexplained investment u/s 69 of I.T. Act.

12. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the additions made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the assessee is in further appeal before us.

13. The Ld. Counsel for the assessee, submitted before us written submission, which is reproduced below:

- 1) Assessee filed original ROI for A Y 2011/12 declaring income of Rs.4,14,477/-
- 2) Assessment was reopened on the basis of alleged incriminating documents recovered from A Sai Leela Associates office of Shri Turmish B. Kania, Advocate & Meera T. Kania, notary during the course of Survey proceedings.
- 3) The print outs of the hard disc impounded from A Sai Leela Associates contained various MOU and such documents related to land and property dealings prepared by Shri Turmish Kania & Meera Kania.

4) AO issued notice u/s 148 for scrutiny on the basis of following Satakhat in the name of the assessee found therein:

5)

Land Details	Other Party	Date of Satakhat	Cash payment noted in Satakhat
Bamroli * Block #155		05.02.2011	Rs. 58, 50, 000/- A admitted Rs. 29, 50, 000/-
Bamroli Block #45 (13.33%)	Chetanbhai Chanabhai & othrs	09.10.2010	Rs. 25, 00, 000/-
Bamroli Block #45 (13.33%)	- Same as above-	09.10.2010	Rs. 20, 00, 000/-
Bamroli Block # 45 (66.66%)	Maniben Zalabhai & othrs	16.08.2010	Rs. 1,00, 00, 000/-
Bamroli Block # 45 (6.68%)	Bhaniben Bhanabhi & othrs	12.10.2010	Rs. 35, 00, 000/-
Jiuav Block #437	Dahiben Purshottam & othrs	25.10.2011	Rs. 1,00, 0000/-[19.10.2010] Rs. 9, 00, 000/- [25.10.2010]
Jiuav Block #437	Lilaben Dayabhai & othrs	25.10.2011	Rs. 1,00, 000/-[19.10.2010] Rs. 9, 00, 000/-[14.03.2011]
Jiuav Block #437	Bhaniben Bhanabhi & othrs	25.10.2011	Rs. 1,00, 000/-[19.10.2010] Rs. 9,00, 000/- [25.10.2010]

Bamroli land 13.33% share in block # 45

Impounded Satakhat dated 09.10.2010 indicated following facts:

1. Satakhat is of land at Bamroli Block 45 admeasuring 1 1027 sq. mtrs.
2. Kalpesh Mafatlal Patel & **Yogesh Mohanlal Patel** are purchasers
3. Chetanbhai Channabhai & Others are sellers
4. Cash of Rs. 25,00,000/- is paid against sale price of 80,00,000/-

AO issued SCN for treating Rs. 40 lacs as unexplained investment in the hands of assessee & balance 40 lacs on protective basis. AO noted that assessee denied signing any such Satakhat and also denied purchasing of such land. AO captured screen shot of impounded Satakhat from computer of Turmish Kania on page 5 of the order and then noted that notary register of Meera Kania showed notarization of Satakhat in the name of Kalpesh Mafatlal Patel. AO during scrutiny assessment made an inquiry from sub registrar office

and noticed that land was in possession of persons named in Satakhat which negates plea of the assessee of having not entered into any Satakhat for the lands at Bamroli.

5. Sale deed executed with Taraben Ajitbhai Patel & others by Chhanabhai Prabhubhai & others on 18.03.2011 without mention of so called notarized Satakhat in Dastavej bearing # 4851 [Page 6 AO]

6. No mention of assessee in sale deed as confirming party

7. AO makes addition of Rs. 12, 50, 000/- (50% of Rs. 25 lacs) cash only though SCN issued for addition of Rs. 40, 00, 000/- (50%)

8. Addition of balance amount (Rs. 12. 50, 000/-) neither made in the hands of co-owner Shri Yogesh Mohanlal Patel nor in the hands of the assessee on protective basis.

9. Addition is made u/s 69 as unexplained investment.

10. AO concluded that direct evidence in the form of notarized Satakhat found in the notary register of Meera Kania and prevailing practice with respect to land transactions assessee made unexplained investment in the lands at Bamroli.

Similar exercise was undertaken by AO in respect of other parcels of land mentioned in the table above and finally additions were made of Rs. 92, 00, 000/- on the basis of Satakhat stored in the impounded computer of A Sai Leela Associates during survey.

Submissions:

1. AO relied on the statement of assessee u/s 131 before the investigating wing of having made cash payment of Rs. 29, 50, 000/- towards purchase of the land at Bamroli Block No. 155 [Page 2 AO] to form basis for making additions in case of other parcels of land.

Reply: No addition of Rs. 29, 50, 000/- is made by AO being satisfied that payment for the said land is shown in the books of accounts & land is jointly purchased by the assessee along with 2 other persons [Page 169 of P/B II]

2. AO held that Turmish B Kama in his statement categorically admitted that the Satakhat were prepared with consent of both the parties.

Reply: a). Assessee admitted having engaged Turmish B Kania for professional work in the past but denied having executed any such Satakhat mentioned in the table [Page 172 of P/B II]

b) Turmish B Kania in his statement never mentioned name of the assessee in answer to any question but stated that some of the Sale deeds, Kabja Rasid, Satakhat impounded from A Sai Leela Associates are related to his clients whereas there are some that are used as format. [Page 183 of P/B II]

3. AO noted that Notary Register of Meera Kania showed documentation of few Satakhat in the name of assessee with signature & thumb impression.

Reply: The alleged direct evidence was never confronted to the assessee for rebuttal. Department failed to supply notary register though RTI application was filed to request for the same.

4. AO during the assessment proceedings made an inquiry with sub registrar office and was informed that impugned lands were sold to others than the assessee and his co-owner Yogesh Mohanlal Patel vide registered sale deed. AO confirmed the addition drawing conclusion that Satakhat agreements are entered at lower cost to save tax and stamp duty.

Reply: Overlooking the fact that unsigned, incomplete and unstamped dumb documents taken as printout from the hard disc impounded from the office of A Sai Leela Associates, AO made addition on the basis of surmise, conjecture & assumptions that is not tenable under law.

Ld. CIT (A) without considering submissions, evidences and case laws relied upon confirmed additions made by AO dismissing appeal of the assessee.”

14. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that survey was conducted on the premises of the assessee and from whom the incriminating documents were found relating to the assessee. There was a detail in the computer about the incriminating material. In addition to these, the assessee was associated with his advocate, and the computer CD also found in the possession of the assessee's advocate and notary has made entry in his register. The Id CIT(A) has mentioned in para no. 19 in his finding that these Satakhat were registered and the documents were found from the possession of notary public, have been registered, subsequently therefore Ld. DR contended that these were the actual incriminating documents pertaining to assessee, therefore Id. CIT(A) has rightly sustained the addition made by the Assessing Officer.

15. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that during the assessment stage, the assessee has demanded that opportunity of cross-examination should be given to him. The letter written by the assessee (demanding opportunity of cross-examination) during the assessment stage, to the Assessing Officer, is placed at paper book page no. 47. The Cross examination of Turmish Kania whose statement is relied upon for making addition was not given to the assessee. Therefore, we note that opportunity of cross-examination has not been given to the assessee during the assessment stage. It is settled law that any additions made in absence of providing opportunity of cross examinations of persons, whose statement has been relied upon for making the additions is in violation of natural justice, hence cannot be sustained.

The Hon'ble Supreme Court of India, in the case of Krishnachand Chelaram Vs. CIT 125 ITR 713 (SC) and Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 0241 (SC) has held that additions without providing the opportunity of cross examination is in violation of natural justice. We note that additions made in absence of providing opportunity of cross-examination of the persons, whose statement has been relied upon for making the additions is violation of principle of natural justice. We also note that not allowing the assessee to cross examine the witness by the adjudicating authority though the statements of those witness were made the basis of the impugned order is a serious flaw which makes the order nullity. We note that same view was expressed by the Hon`ble Calcutta High Court in the case of Eastern Commercial Enterprises 210 ITR 103 (Cal), wherein it was held that it is a trite law that cross examination is the sine qua non of due process of taking evidence and no adverse inference can be drawn against the party unless the party is put on notice of the case made out against him.

16. We note that the documents, which were found in the possession of other person, does not bear the name of the assessee, that is, the name of the assessee is not mentioned in the statement of another person. No addition can be made, if documents impounded during survey are unsigned and incomplete. No addition of unaccounted investment can be sustained when Assessing Officer had not made any further investigation. No statement recorded of land owners or purchasers as mentioned in the sale deed by AO to corroborate contents of impounded Satakhat. No specific query raised in respect of impounded Satakhat or the assessee to Turmish or Meera Kama by investing wing or AO. Therefore, no addition can be made in respect of un-signed, unstamped, Satakhat, which has not been registered and is found from CD of computer of a person who is not connected with the assessee. In view of these facts and circumstances and in law, the addition so made by the AO is without any basis, without any corroborating evidences and without allowing due opportunity of cross-examination to the assessee and is therefore, unsustainable in law. Therefore, we delete these additions.

17. We note that facts and grounds of appeal narrated in ITA No. 48/SRT/2017 are identical and similar to those mentioned in ITA No.49/SRT/2017 for AY.2012-13, therefore are instant adjudication shall apply *mutatis mutandis* to assessee`s appeal in ITA No. 49/SRT/2017 for AY.2012-13.

18. In the result, both the appeals filed by the assessee are allowed.

Registry is directed to place one copy of this order in both the appeals folder / case file(s).

Order is pronounced in the open court on 19/12/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 19/12/2022

SAMANTA

Copy of the Order forwarded to

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat