

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA Nos. 7333 to 7336/Mum/2018
(A.Ys.2011-12 to 2014-15)**

Shri Ashok Virambhai Patel, 4/F Raghav Wadi, Ground Floor, Frensh Bridge, Mumbai - 400007	Vs.	DCIT, CC-5(1) Room No. 1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADPP5010G		
Appellant	..	Respondent

**ITA No. 7328/Mum/2018
(A.Y.2014-15)**

Shri Alkesh Patel (Prop. Of M/s Umiya Gems) 4/F Raghav Wadi, Ground Floor, Frensh Bridge, Mumbai - 400007	Vs.	DCIT, CC-5(1) Room No. 1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADPP3944P		
Appellant	..	Respondent

**ITA No. 7332/Mum/2018
(A.Y.2014-15)**

M/s Prakash Gems 4/F Raghav Wadi, Ground Floor, Frensh Bridge, Mumbai - 400007	Vs.	DCIT, CC-5(1) Room No. 1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADFP5468N		
Appellant	..	Respondent

Appellant by :	Viraj Mehta
Respondent by :	Achal Sharma

Date of Hearing	23.12.2022
Date of Pronouncement	30.01.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present 6 appeals of the assessee are directed against the different order of Commissioner of Income Tax, for different assessment years. Since, the issue involved in all the assessee's appeals are identical and based on similar facts, therefore, for the sake of convenience these appeals are adjudicated together.

ITA No. 7334/Mum/2018

- “ 1. On the facts and circumstances and judicial pronouncements, Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment/reassessment in pursuance of the search in violation of provisions of section 153D of Income Tax Act, 1961 and such assessment is erroneous on facts and bad in law and liable to be annulled/quashed.
2. Without prejudice to the above ground, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming addition of Rs.9,88,000/- on account of undisclosed income only on the basis of noting/narrations in relation to person/land during the course of search and seizure action taken on Alkesh Patel Group & others without any conclusive evidence that such flow of funds has taken place in the hands of assessee from the income which has not been disclosed by him in the return of income. Hence such addition is bad in law and erroneous in facts and hence liable to be deleted.
3. Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”

2. Fact in brief is that search and seizure action u/s 132(1) of the Act was conducted on the Alkesh Patel & Other Group on 03.10.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 18.08.2015. The partnership firm M/s Amritbhai Kantilal was engaged in the business of Angadia. During the course of

assessment it is noticed that page nos. 46 and 47 of the Annexure A-2 were found and seized. On these pages there were notings/narration in relation to the person/land. In relation to the seized page no. 46 the assessee submitted that the amount reflected therein was either receivable or cash expenses incurred by the assessee which was written in the hand writing of Shri Virambhai Patel, father of the assessee who was living with the assessee at that point of time. It was explained that page no. 46-47 of the Annexure A-2 were in the hand writing of Shri Virambhai Patel, father of the assessee. However, the assessing officer has added an amount of Rs.9,88,000/- (Rs.4,60,000/- on page no. 46 + Rs.5,28,000/- page no. 47) treating the same as undisclosed income of the assessee and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel vehemently contended that said loose papers were not belonged to the assessee. He further submitted that the said loose papers were in the handwriting of Shri Virambhai Patel the father of the assessee. Without considering the submission, the A.O has arbitrarily made the addition in the hands of the assessee. The ld. Counsel further submitted that A.O has not corroborated the contents of the documents with any material to prove that these were the undisclosed transaction pertaining to the assessee. The ld. Counsel has referred the following common judicial pronouncements for the different appeals filed:

1. *Common Cause (A Registered Society) Vs. Union of India (2017) 77 taxmann.com 245 (SC)*
2. *CBI Vs. V.C. Shukla & Ors (1980) 3 SCC 410 (SC)*
3. *CIT Vs. PV Kalyanasundaram (2007) 294 ITR 49 (SC)*
4. *CIT Vs. PV Kalyanasundaram (2006) 282 ITR 259 (Mad HC)*
5. *Navneet Jhamb Vs. ACIT (2020) 422 ITR 332 (P &H HC)*
6. *CIT Vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj HC)*
7. *DCIT vs. Ashok Vihar (2020) 205 TTJ 547 (Raipur ITAT)*
8. *Shailesh P Gonawala Vs. ACIT (2012) 2 TTJ 345 (Ahd ITAT)*

9. *Kotu Sarat Kumar Vs. DCIT (2019) 71 ITR (TRib) 147 (Viz ITAT)*
10. *Cascade Holdings (P) Ltd. Vs. DCIT (2021) 213 TTJ 491 (Mum ITAT)*
11. *Solitare World Pvt. Ltd. VS. ACIT, ITA No. 2638/Del/2018 (Del ITAT)*

On the other hand, the ld. D.R supported the order of assessing officer and stated that paper was found from the premises of the assessee, therefore, presumption u/s 292C applied in the fact of this case. The ld. D.R referred the following judicial pronouncements:

- i. *Hon'ble Bombay High Court in the case of Surendra M. Khandar Vs. ACIT (2009) 224 CTR 409 (Bombay)*
- ii. *Hon'ble Madras High Court in the case of M. Vivek Vs. DCIT, CC-2(i/c) Trichy (2020) 121 taxmann.com 366 (Madras)*
- iii. *Hon'ble Jharkhand High Court in the case of Mahabir Prasad Rungta Vs. CIT(A) Ranchi (2014) 43 taxmann.com 328 (Jharkhand)*

5. Heard both the sides and perused the material on record. During the course of search action page no. 46 and 47 of the Annexure A-2 was found and seized. The A.O stated that the assessee explained that amount reflected in these papers were in the hand writing of his father showing either amount received or cash expenses. However, the assessing officer was of the view that these notings were made on the instruction of the assessee. The assessee also explained that land belongs to joint family was and the same was sold which was reflected in financial year 2013-14 and 2014-15. However, the A.O has not agreed with the submission of the assessee and treated the amount of Rs.4,60,000/- reflected on page no. 46 and amount of Rs.5,28,000/- reflected on page no. 47 as undisclosed income of the assessee. The assessee has not accepted that these loose papers were belonged to the assessee. The assessee explained to the A.O vide letter dated 02.12.2015 that assessee was attending on behalf of his father Shri Virambhai Patel. It was undisputed fact that the loose paper page no. 46 was in the hand writing of Shri Virambhai Patel, father of the assessee. There was no any material to corroborate that the transaction mentioned in the said paper belonged to the assessee. The A.O has not disproved these facts

submitted by the assessee that said paper did not belong to the assessee and the said papers were in the hand writing of Shri Virambhai Patel, father of the assessee. The assessee has also explained that loose paper page 47 pertained to the sale of joint family land which was already recorded in the book of account in F.Y. 2013-14 and F.Y. 2014-15 and submitted the receipt and relevant pages of the agreement. However, without considering the submission made by the assessee and the facts submitted by the assessee A.O had made the addition treating it as undisclosed income of the assessee. In the light of the above facts we consider that without corroborating any material to link such paper belonging to the father of the assessee as undisclosed income of the assessee on assumption and presumption basis is not justified.

6. We have gone through the judicial pronouncements in the case of *Common Cause Vs. Union of India* (2017) 77 taxmann.com 245 (SC) as referred supra held that department had no evidence to prove that entries in loose papers and electronic data were kept regularly during the course of business of concerned business house.

In the case of *CIT Vs. P.V. Kalyansundaram* (2007) 294 ITR 49 (SC) the Hon'ble Supreme Court has upheld the order of the ld. CIT(A) wherein held that notings loose pieces of papers were vague and could not be relied upon.

In the case of *CIT Vs. Maulikkumar K. Shah* (2008) 307 ITR 137 (Guj HC) the Hon'ble Gujarat High Court as held that the addition as made by the assessing officer being based on mere presumption and assumptions and without any corroborative evidences cannot be sustained and the said addition have rightly been deleted by the ld. CIT(A).

The decision of ITAT Raipur in the case of *Ashok Vihar Vs. DCIT* (2020) 205 TTJ 547 (Raipur ITAT) pertained to the issue that addition

made by the A.O could not be sustained in the absence of any corroborative evidence.

In the case of Shailesh P. Gonawala Vs. ACIT (2012) 2 TTJ 345 (Ahd ITAT) the Ahmedabad ITAT held that revenue is not justified in making the addition merely on the basis of notings found on a seized paper. It is also contended that a business man maker estimation for the project taking by various consideration into account but the actual expenditure is incurred and amount is spent when the project is executed. The estimation is merely on presumptive figure and not an actual figure.

We have also perused the decision referred by the Id. D.R in the case of Mahabir Prasad Rungta S. CIT(A) (2014) 43 taxmann.com 328 (Jharkhand) the Hon'ble High Court of Jharkhand held in that case, there was specific document pertaining to charging higher rent paid for the premises which was collaborated with the lease agreement entered into between the assessee and the landlord. However, in the case of the assessee the AO could not collaborate the transaction found in the loose paper with any relevant corroborating material.

The Id. D.R also referred decision of M. Vivek Vs. DCIT, CC-2(i/c) (2020) 121 taxmann.com 366 (Madras) we find that in that case is pertained to the issue of violation of Principle of natural justice regarding not giving of sufficient opportunity to the assessee and however it was found that each and every objection raised by the assessee had been considered by the assessing authority. However, the fact of the case in the case of the assessee are different since the contents of the notings found in the material was not corroborated by the A.O with relevant material.

The Id. D.R referred the decision pertaining to Surendra M. Khandhar Vs. ACIT (2009) 224 CTR 409 (Bombay) the Hon'ble Bombay

High Court as the issue in that case pertained to presumption made u/s 292C because the assessee has not denied the specific transaction of return of amount of Rs.20 lac advance by the assessee. However, the facts in the case of the assessee are different as the transaction noted in the loose papers could not be corroborated by the assessing officer. Therefore, we direct the A.O to delete the addition. This appeal of the assessee is allowed.

ITA No. 7335/Mum/2018

- “1. *A Search and Seizure operation u/s 132(1) of the Income Tax Act, 1961 was conducted on the Alkesh V Patel & Other Groups on 03.10 2013. On the given facts, circumstances and judicial pronouncements; Hon CIT(A) erred in confirming the action of Ld. Assessing Officer in passing the order under section 153A of the Act without appreciating the fact that there was no evidence or material found in the course of search action in respect of the year under consideration and hence, the assessment order passed invoking the provisions of section 153A of the Act is bad in law and erroneous in facts and liable to be quashed.*
2. *On the given facts, circumstances and judicial pronouncements, Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer that Ld. Assessing Officer has failed to appreciate that no material or evidence was found in the course of search action and hence, the underlying purpose of making assessment under section 153A of the Act i.e. to assess income which is not disclosed or would not have been disclosed in terms of the provisions of section 132 of the Act failed and thus, the assessment made under section 153A of the Act as if it were a regular scrutiny assessment is without any justification and liable to be quashed.*
3. *On the given facts, circumstances and judicial pronouncements; Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment order without appreciating that this assessment being not pending was not abated and such framing of the assessment order is bad in law and erroneous in facts and liable to be annulled.*
4. *On the facts and circumstances and judicial pronouncements; Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment/reassessment in pursuance of the search in violation provisions of section 153D of Income Tax Act, 1961 and such assessment is erroneous on facts and bad in law and liable to be annulled/quashed.*
5. *Without prejudice to the above grounds, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming addition of Rs.21,27,487/- (Rs.125/- per lac Le 1,70,19,90,000*125/1,00,000) on account of undisclosed income. Such addition is based only on the basis of loose handwritten papers/slips and red dairy found during the course of*

search and seizure proceedings conducted at premises of Alkesh Patel & others without any conclusive evidence. Such addition is bad in law and erroneous in facts and hence liable to be deleted.

6. *Without prejudice to the above grounds, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming addition of Rs.29.23,872/- on account of undisclosed source of income on the pretext that Appellant had entered into a reconstitution agreement with the partnership firm M/s. Ashok Diamond in which Appellant was holding 40% profit margin and addition was made being the difference in amount value of assets held by the Partnership Firm as on the date of reconstitution of the Firm minus amount of consideration actually received by the Appellant. Such addition is bad in law and erroneous in facts and hence liable to be deleted.*
7. *Without prejudice to the above grounds, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming the addition in the hands of both the newly admitted partners as well as both the retiring partners. It is submitted that there is double addition made during the year under consideration. The contention of the CIT (Appeals) that there has been transfer of cash from one hand to another is without any base as there has not been any transfer of cash between the buyer and the seller and neither it has been found in search action of such cash transfer nor has it been stated in any ones statements. Therefore it is prayed to your honour to kindly give the necessary direction in this regards*
8. *Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”*

Ground No. 1 to 5:

7. Without reiterating the fact as elaborated supra in this case the assessment u/s 153A r.w.s 143(3) of the Act was completed on 22.03.2016. The assessing officer has stated that during the course of search a diary of red colour was found and seized along with loose paper from page no. 1 to 48 as annexure A2. Shri Ashok Patel was confronted with the loose paper found and seized and about the red diary the assessee explained that seized diary was like a “hindi bahi khata”. On the left side of the account was cash received and right side of the account was cash paid. Regarding loose paper he explained that these were slips found in the same diary as explained. He further stated that these slips were prepared by his brother Shri Alkesh Bhai Patel from whom he was learning accounting with the help of these slips. The A.O has not accepted the explanation of the assessee and stated that red

diary was seemed to be running diary having entries of plus sign represent receipt of cash and minus sign represents cash payments. The A.O also referred the discussion at where it was inferred that Shri Ashok Bhai Patel was working as Angadia and charged the fixed amount based on the quantum of cash and the distance between the locations. Vide statement dated 04.10.2013 the assessee has admitted that Rs.100/- was charged for per lac in case of transfer of parcel from Mumbai to Gujarat and Rs.200/- was charged per lac for transferring parcel from Mumbai to Delhi. Based on the total of the entries from page no. 1 to 27 the A.O has worked out transferred in/transferred out the cash of Rs.170,19,90,000/-. Considering the fact that most of the transfer of cash taken place between Mumbai & Gujarat, therefore, he has estimated total undisclosed income @ Rs.125/- for transferring the cash of Rs.1 lac which was not recorded in the books of account to the amount of Rs.21,27,487/-.

8. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

9. Heard both the sides and perused the material on record. During the course of search action loose paper were found and seized from the residence of Shri Ashok Patel. The assessee explained that entries in red diaries were made by him as per the detail provided by Shri Alkesh Patel in order to learn accounting entries. The assessing officer noticed that there was correlation between the hand written entries on the print out and the entries appearing in red diary. The A.O stated that Shri Ashok Patel in his statement dated 04.10.2013 admitted that entries in red diaries with plus sign means cash received and minus sign means cash paid. The AO further stated that assessee was working as angadia and charge fixed amount based on the quantum of cash and distance between the locations. He had admitted that Rs.100 per lac was charged for transfer of parcel from Mumbai to Gujarat and Rs.200/- was

charged for transferring of parcel from Mumbai to Delhi. At one point of time assessee was transferring cash in on behalf of his client while on other occasion he was transferred cash out on behalf of the clients. In both types of transaction the assessee was charging commission from its clients. The assessing officer after making analysis of the documents seized observed that assessee had not deliberately written the last three digit of the transaction to conceal the true value of the amounts. Therefore, the A.O has worked out that assessee had transferred in/transferred out the cash of Rs.170,19,90,000/- and estimated the charges @ Rs.125 per lac and added Rs.21,27,487/- to the total income of the assessee. In the light of the above facts and nature of transaction as discussed above we consider that claim of the assessee that he was learning accounting entries is not correlated with the transaction recorded in the loose paper and the diaries. Since, the assessee was involved in the business of angadia and nature of transaction showed that there was transfer of cash in and out at the different places as discussed by the A.O from the contents of the transactions recorded in seized document. Therefore, we do not find any reasons to interfere in the finding of the Ld. CIT(A). Accordingly, these grounds of appeal 1 to 5 of the assessee are dismissed.

Ground No. 6 and Ground No. 7: (Addition of Rs.29,23,872/- on account of undisclosed source of Income):

10. Fact in brief is that search action u/s 132(1) of the Act was conducted on the Alkesh B. Patel and other group on 03.10.2013. During the course of assessment u/s 153A r.w.s 143(3) of the Act. The A.O stated that assessee was the partner in M/s Ashok Diamond which in turn was the owner of immovable property of his premises being No. EW-1011, Bharat Diamond Bourse, BKC, Bandra (E), Mumbai along with the two properties located at Nagpur. The partnership deed of M/s Ashok Diamond was reconstituted on 03.03.2011 by virtue of Mr.

Virambhai Patel, the assessee and Mr. Ashok Patel son of the assessee were retired and two new partner Mr. Rohit Patel & Mr. Rajesh Patel were admitted as new partners. The new partner contributed capital of Rs. 5 lac each. M/s Ashok Diamond was having fixed asset of Rs.76,08,605/- and Shri Rohit Patel and Shri Rajesh Patel had introduced capital of Rs.10 lac by virtue of which they got right in 90% profit of M/s Ashok Diamond cumulatively. From these facts the A.O noticed that new partners invested only of Rs. 5 lac each and each of them got right of Rs.34,23,872/- in the properties (45% of Rs.76,08,605/- being value of fixed assets). The A.O observed that this amount has been received in cash by the outgoing partner Shri Virambhai Patel and the assessee and Shri Ashok Patel in proportion of their right. Therefore, an amount of [Rs.34,23,872/- (-) Rs. 5 lac] was added to the total income of the assessee.

11. The ld. CIT(A) has dismissed the appeal filed by the assessee.

12. During the course of appellate proceedings before us, the ld. Counsel contended that the assessee had retired from the partnership firm and has not received any specific right with respect to properties of the firm and A.O has no basis to hold that the amount of Rs.29,23,872/- was received from the undisclosed source of income.

On the other hand, the ld. D.R has supported the order of the lower authorities.

13. Heard both the sides and perused the material on record. The AO observed that Mr. Rohit Patel and Mr. Rajesh Patel, were admitted as new partners and contributed capital of Rs.5,00,000/- each whereas Mr. Ashok Diamond was having fixed asset of Rs.76,08,605/- and just by introducing capital of Rs.10 lac these two partners has got right in 90% profit of M/s Ashok Diamond cumulatively. The A.O further observed that by contributing Rs. 5 lac each new partner got 45% of the

fixed assets of the assessee firm i.e amount of Rs.34,23,872/-. Therefore, after reducing 5 lac amount of contribution the balance amount of Rs.29,23,872/- was added to the total income of the assessee as undisclosed amount received in cash by the assessee. In the decision of Shri Rajesh K. Patel and Shri Rohit Patel vide ITA No.7517/Mum/2018 and ITA No.49/Mum/2019 dated 18.02.2020 both were the new partners entered in the partnership vide ITA No. 49/M/2019 and ITA No. 7517/M/2018 on the similar issue and identical facts the ITAT, Mumbai as held that A.O has not brought on record any evidence to this fact that assessee has paid cash or unexplained consideration to become partner in the said firm, therefore, the addition is based on the presumption and surmises. The assessee explained that on the reconstitution of the partnership firm there was no transfer of capital asset. The A.O had not brought on record any cogent material or evidence in respect of alleged amount received from the new partners by the assessee. The assessing officer has also not referred any incriminating material showing that assessee has received the impugned amount of cash from incoming partner of M/s Ashok Diamond. The AO has created such transactions on presumption basis and not substantiated the addition made with any relevant material/evidences, therefore after considering the above facts and judicial findings as discussed at para 6 of this order we consider that decision of Id. CIT(A) in sustaining the impugned addition is not justified. Accordingly, these grounds of appeal of the assessee are allowed.

14. In the result, the appeal of the assessee is partly allowed.

ITA No. 7336/Mum/2018

- “1. *A Search and Seizure operation u/s 132(1) of the Income Tax Act, 1961 was conducted on the Alkesh V Patel & Other Groups on 03.10.2013. On the given facts, circumstances and judicial pronouncements; Hon CIT(A) erred in confirming the action of Ld. Assessing Officer in passing the order under section 153A of the Act without appreciating the fact that there was no evidence or material found in the course of search action in*

respect of the year under consideration and hence, the assessment order passed invoking the provisions of section 153A of the Act is bad in law and erroneous in facts and liable to be quashed.

2. *On the given facts, circumstances and judicial pronouncements, Hon CIT(A) erred in confirming the action of Ld. Assessing Officer that Ld. Assessing Officer has failed to appreciate that no material or evidence was found in the course of search action and hence, the underlying purpose of making assessment under section 153A of the Act ie to assess income which is not disclosed or would not have been disclosed in terms of the provisions of section 132 of the Act failed and thus, the assessment made under section 153A of the Act as if it were a regular scrutiny assessment is without any justification and liable to be quashed.*
3. *On the given facts, circumstances and judicial pronouncements; Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment order without appreciating that this assessment being not pending was not abated and such framing of the assessment order is bad in law and erroneous in facts and liable to be annulled.*
4. *On the facts and circumstances and judicial pronouncements, Hon. CIT(A) erred in confirming the action of Ld Assessing Officer in framing the assessment/ reassessment in pursuance of the search in violation of provisions of section 153D of Income Tax Act, 1961 and such assessment is erroneous on facts and bad in law and liable to be annulled/ quashed.*
5. *Without prejudice to the above grounds, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming addition of Rs.6,62,286/- (Interest of Rs.13,400/- and Principal of Rs.6,48,886/-) on account of undisclosed income on the pretext that Appellant is involved in the money lending and charges interest on the principal amount and failed to consider that there is no match between rate of interest and principal, further the calculation done by the learned assessing officer is arbitrary calculation and without any base. Such addition is bad in law and erroneous in facts and hence liable to be deleted.*
6. *Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”*

Ground No. 1 to 5:

15. Without reiterating the fact as referred supra assessment in this case was also made u/s 153A r.w.s 143(3) of the Act on 22.03.2016. During the course of assessment the A.O referred the loose paper from page no. 1 to 48 as placed in Annexure A-2. On query the assessee submitted vide letter dated 02.12.2015 that the said paper contained the quantum of interest of Rs.6,48,881/-. On further examination the AO noticed that assessee was involved in the money lending and charged

interest on the principle amount. Therefore, an amount of Rs.6,62,286/- (Rs.6,48,886/- was being principle amount and Rs.13,400/- being interest amount was added to the total income of the assessee as undisclosed income of the assessee.

16. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee.

17. Heard both the sides and perused the material on record. During course of search certain loose papers were found at the residence of Shri Ashok Patel, as reproduced at page no. 3 of the assessment order. During the course of assessment the assessee submitted vide letter dated 02.12.20.2015 that these papers contained calculation of interest amount. It is demonstrated from the material on record and the contents of the paper that there was recording of amount date wise along with interest and principle amount which established that assessee had earned interest on the undisclosed amount. Therefore, we don't find any reason to interfere in the finding of Id. CIT(A). Accordingly, all the grounds of appeal of the assessee stand dismissed.

18. In the result, the appeal of the assessee stand dismissed.

ITA No. 7333/Mum/2018

Ground No. 1 to 7:

19. As the facts and the issue involved in this appeal pertaining to addition of Rs.4,74,000/- and Rs.3,47,500/- on the basis of page no. 47, & 48 of Annexure A-2 which were in the handwriting of Shri Virambhai Patel, the father of the assessee and not belonging to the assessee are the same as supra in ITA No. 7334/Mum/2018 therefore, applying the same findings mutatis mutandis, these grounds of appeal of the assessee are allowed.

ITA No. 7328/Mum/2018 (Shri Alkesh Patel)

- “1. *On the facts and circumstances and judicial pronouncements, Hon CIT(A) erred in confirming the action of Ld Assessing Officer in framing the assessment/reassessment in pursuance of the search in violation of provisions of section 153D of Income Tax Act. 1961 and such assessment is erroneous on facts and bad in law and liable to be annulled/quashed*
2. *Without prejudice to the above grounds, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming addition of Rs.39291.504/- only on account of loose papers found and seized on conducting a search and seizure from the residence of the Appellant on the pretext that the loose papers reveal the undisclosed Cash Income earned by the appellant. The CIT(A) has also erred in understanding the fact that such papers does not belong to the appellant and there are no facts or evidence on record which shows that such paper belongs to the appellant. Hence such addition is bad in law and erroneous in facts and hence liable to be deleted.*
3. *Without prejudice to the above grounds, on the given facts and circumstances Rs.100 per lakh for the value of the parcel be considered as commission. Therefore only Rs.100 per lakh on the amounts seen in the page no. 14 and 15 should be considered for the year under consideration. Hence such addition is required to be reduced on the basis of the said calculation.*
4. *Without prejudice to the above grounds, on the given facts and circumstances the amounts shown are segregated as receipts and payments being on left and right side of the loose paper as seen in the page no 14 and 15, therefore only the difference in the amount shown in the left and right side of the said page should be added and not the entire amount for the year under consideration. Hence such addition is required to be reduced on the basis of the said calculation.*
5. *Without prejudice to the above grounds, on the given facts and circumstances the assessee was into the business of providing accommodation entries of purchase and sales as can be seen from the addition of earlier years. Therefore profit margins on figures seen in the loose paper vide page nos. 14 and 15 should be added on the pretext that such entries are on account of accommodation entries provided by the appellant and not the entire amount for the year under consideration. Hence such addition is required to be reduced on the basis of the said calculation.*
6. *Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”*

Ground No.1 to 5:

20. Without reiterating the facts as elaborated above in this case assessment u/s 143(3) of the Act for the A.Y. 2014-15 was finalized on 07.03.2016. During the course of search action certain loose paper were

found and seized from the residence of Shri Alkesh Patel as per page no. 1 to 15 of Annexure A1 as reproduced at page no. 2 & 3 of the assessment order. The assessee in the submission made vide letter dated 24.12.2015 and 23.02.2016 submitted that this paper consisted of detail pertaining to some cash transaction, RTGS transaction of various periods. The assessee further submitted that this paper was not related to them but was left by someone in their premises. Without prejudice the assessee also submitted that as stated by Ashok Patel during the course of search proceedings that they were into angadia business and received Rs. 100/- per lac for the value of parcel. Therefore, amount shown in page no. 14 & 15 should be considered for the purpose of Angadia business. Further, without prejudice the assessee submitted that page no. 14 & 15 were seen to be in the form of ledger account and amounts were seen to be received and paid, therefore, the balance of net of debit and credit should be considered instead of considering the full amount for the year under consideration. After considering the submission of the assessee the A.O stated that seized paper were found from the residence of the assessee and the assessee has not submitted any affidavit to state that these document were not pertained to him. On analysis of papers the A.O observed that assessee was involved in the cash/RTGS transaction in the month of June, July, August and September, 2013. The A.O has aggregated the total of the left side of the page no. 14 & 15 to the amount of Rs.1,62,65,000/- and the right side to the amount of Rs.230,26,504/- and treated the combined total of Rs.2,30,265,504/- + Rs.1,62,65,000/- aggregating to Rs.3,92,91,504/- as undisclosed income of the assessee and added to the total income.

21. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

22. Heard both the sides and perused the material on record. A search and seizure action was conducted on the Alkesh V. Patel and other

group on 03.08.2013. The assessee was the proprietor of Umiya Gems which was primarily engaged in the business of diamond trading. During the course of search loose paper from serial no. 1 to 15 of annexure A1 was found and seized as reflected at page no. 2 to 3 of assessment order. During the course of assessment assessee explained that seized loose papers showed to some cash transaction, RTGS transaction for various parties and these paper were left by someone in his premises. Without prejudice it was also explained that Shri Ashok Patel was engaged in the angadia business and received Rs.100 per lac for the value of parcel. Further without prejudice the assessee stated that the amount seen is to be received and paid, therefore, balance net of debit or credit be considered. However, the assessing officer has taken aggregate total of the left side of Rs.230,26,504/- and of the right side of Rs.162,65,000/- to the amount of Rs.3,92,91,504/- and added the entire amount as undisclosed income of the assessee. During the course of assessment the assessee produced the relevant copies of bank statement pertaining to the period claiming that no such amount has been reflected in the bank statement. It was also submitted that no corroborating material have been found to substantiate the nature of the transaction reflected in the loose paper and it was also not proved that it pertained to the undisclosed income of the assessee. After taking into consideration the nature of transaction and the fact that assessee group was engaged in Angadia business and at para 5.4.5 the AO stated that there were 7 groups of transactions on the left side of both the pages and these groups were having similar quantum of transaction within a group and stated that Shri Alkesh Patel was involved in the cash/RTGS transaction, we consider that adding of whole amount as undisclosed income without corroborating with any other material is not justified. After considering judicial findings as discussed at para 6 of this order and the fact that assessee group was mainly engaged in the

angadia business, we restrict the addition to the extent of difference in the amount of transaction reported at Rs.67,61,504/-. Therefore, the grounds 1 to 5 of appeal of the assessee are partly allowed.

ITA No.7332/Mum/2018 (M/s Prakash Gems)

- “1. *A Search and Seizure operation u/s 132(1) of the Income Tax Act, 1961 was conducted on the Alkesh V Patel & Other Groups on 03.10.2013. On the given facts, circumstances and judicial pronouncements; Hon CIT(A) erred in confirming the action of Ld. Assessing Officer in passing the order under section 153A of the Act without appreciating the fact that there was no evidence or material found in the course of search action in respect of the year under consideration and hence, the assessment order passed invoking the provisions of section 153A of the Act is bad in law and erroneous in facts and liable to be quashed.*
2. *On the given facts, circumstances and judicial pronouncements, Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer that Ld Assessing Officer has failed to appreciate that no material or evidence was found in the course of search action and hence, the underlying purpose of making assessment under section 153A of the Act i.e, to assess income which is not disclosed or would not have been disclosed in terms of the provisions of section 132 of the Act failed and thus, the assessment made under section 153A of the Act as if it were a regular scrutiny assessment is without any justification and liable to be quashed.*
3. *On the given facts, circumstances and judicial pronouncements: Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment order without appreciating that this assessment being not pending was not abated and such framing of the assessment order is bad in law and erroneous in facts and liable to be annulled.*
4. *On the facts and circumstances and judicial pronouncements; Hon. CIT(A) erred in confirming the action of Ld. Assessing Officer in framing the assessment/reassessment in pursuance of the search in violation of provisions of section 153D of Income Tax Act, 1961 and such assessment is erroneous on facts and bad in law and liable to be annulled/quashed.*
5. *Without prejudice to the above ground, The Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming the Order of Assessing Officer of making addition of Rs.1,67,69,307/- on account of Long Term Capital Gains on transfer of Property The addition is made and confirmed on the pretext that Appellant has shown full value of sale consideration at Rs.88,34,000/- which is less than what was proposed at the time entering into draft agreement for sale of property Rs.2,38,12,236/- It is therefore prayed to your honour to delete such addition as it is bad in law and erroneous in facts, hence liable to be deleted*
6. *Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”*

6. *Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”*

Ground No. 1 to 5:

23. Similar to the fact as elaborated above in this case a search and seizure action u/s 132(1) of the Act was conducted on the Alkesh V. Patel & other group on 03.10.2013 and total income was assessed at Rs.1,67,69,307/- u/s 143(3) of the Act. The A.O stated that during the course of search proceedings a copy of draft agreement on the whatsapp of the mobile of Shri Alkesh Patel the partner in the assessee firm was found pertaining to sale of office at 1012 Bharat D. Bourse for total consideration of Rs.2,38,12,236/- at Bandra Kurla Complex, Bandra (East), Mumbai. However, during the course of assessment the AO noticed that assessee has given working of capital gain after adopting sale value of Rs.88,34,300/- as against the amount shown in the draft agreement found on the whatsapp to the amount of Rs.2,38,12,236/-. On query the assessee explained that proposed amount of Rs.2,38,12,236/- was only shown as proposal on the rough draft agreement found on the whatsapp of mobile phone of Shri Alkesh Patel and same should not be taken as actual sale consideration. The actual sale consideration of the said property was at Rs.88,34,000/- which was even higher than the stamp value of the sold property of Rs.87,72,000/-. The assessee also explained that said rough proposal was made on 14.01.2013 whereas the actual property was sold on 30.07.2013. Therefore, the assessee submitted that capital gain on sale of property should be considered only on the basis of real sales agreement and not on the basis of rough draft agreement found on the whatsapp which was not materialized. However, the A.O has not agreed with the submission of the assessee and computed the capital gain on the basis of rough draft agreement of the sold property found on the whatsapp of Shri Alkesh Patel partner of the assessee firm.

24. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

25. Heard both the sides and perused the material on record. During the course of search action a rough draft agreement was found on the whatsapp of the mobile of Shri Alkesh Patel the partner of the assessee related to the sale of the office premises as discussed above. The assessee has explained along with supporting relevant material that actually the said property was sold at Rs.88,34,000/- and whatsapp proposal was rough draft prepared by the broker which was not materialize. It was also explained that sale consideration of Rs.88,34,000/- was more than stamp value of the property of Rs.87,72,000/-. The decision of Hon'ble P & H High Court in the case of **Navneet Jhamb Vs. ACIT (2020) 422 ITR ITR 332 (P&H HC)** pertained to the issue that there was no statement of the seller regarding obtaining the money and therefore the addition was not sustained. It was also held that while deleting the addition the Tribunal recorded that the figures mentioned in document at the best be said to be tentative or expected amount and revenue had no case that the circular rate was more than what have been disclosed. It was also explained that nowhere it was submitted that actual amount had been received as per the draft proposal. It was also explained that draft proposal was made on 14.01.2013 whereas the property was actually sold on 30.07.2013. The draft proposal was only prepared by the broker. After perusal of the aforesaid facts and material it is observed that A.O had not brought on record any other material to confront that sale was made as per the draft proposal. The A.O has also not made any inquiry to prove contrary to the claim of the assessee that actually the property was sold at Rs.88,34,000/-. The ld. CIT(A) has reiterated the facts reported by the A.O who had failed to consider that A.O had not brought on record any material to disprove the claim of the assessee that actual sale was made on 30.07.2013 as per the registered

sale agreement. During the course of assessment the assessee has also submitted a copy of registered sale agreement and copy of the purchase agreement of the office premises sold. The assessee also explained that draft proposal found on the mobile was baseless and it was not materialized and it was not established that assessee was in receipt of any amount in excess of the amount shown in the return of income for A.Y. 2014-15. The A.O has made the impugned addition only on the basis of his observation made on the rough draft agreement but the A.O has not supported his finding with any corroborative and conclusive evidence in spite of the fact that on mobile whatsapp it was stated that same was a rough draft proposal. The A.O had neither made out any independent verification from the broker, buyers and nor obtained any valuation report from the independent sources i.e DVO. In view of the above facts and circumstances and judicial findings the action of the AO to make addition on the basis of rough draft agreement found on the mobile is not justified. Therefore, this ground of appeal of the assessee is allowed.

26. In the result, the appeals of the assessee is partly allowed.

Order pronounced in the open court on 30.01.2023

Sd/-

(Kavitha Rajagopal)
Judicial Member

Place: Mumbai

Date 30.01.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.