

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

IT(SS)A No. 48 & 50/SRT/2022 (AY: 2018-19 & 2019-20)

(Hearing in Physical Court)

Assistant Commissioner of Income Tax, Central Circle-2, Surat.	Vs.	M/s Patel Madhavlal Maganlal & Co., 3/139, Parsi Sheri Navapura, Surat-395003. <b>PAN: AADFP 2740 F</b>
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

IT(SS)A No. 45/SRT/2022 (AY: 2019-20)

M/s Patel Madhavlal Maganlal & Co., 3/139, Parsi Sheri Navapura, Surat-395003. <b>PAN: AADFP 2740 F</b>	Vs.	Assistant Commissioner of Income Tax, Central Circle-2, Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

ITA No. 184/SRT/2022 (AY: 2020-21)

M/s Patel Madhavlal Maganlal & Co., 3/139, Parsi Sheri Navapura, Surat-395003. <b>PAN: AADFP 2740 F</b>	Vs.	Deputy Commissioner of Income Tax, Central Circle-2, Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

ITA No. 202/SRT/2022 (AY: 2020-21)

Deputy Commissioner of Income Tax, Central Circle-2, Surat.	Vs.	M/s Patel Madhavlal Maganlal & Co., 3/139, Parsi Sheri Navapura, Surat-395003. <b>PAN: AADFP 2740 F</b>
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Department by	Shri Ashok B. Koli, CIT-DR
Assessee by	S/Shri Vartik Choksi, Biren Shah & Nitin Gheewala (ARs)
Date of hearing	26/04/2023
Date of pronouncement	30/05/2023

## **Order under section 254(1) of Income Tax Act**

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

1. These five appeals/cross appeals by the revenue as well as by the assessee are directed against the separate orders of the learned Commissioner of Income Tax (Appeals)-4, Surat [in short 'Id. CIT(A)] all dated 18/04/2022 for the Assessment Year (AY) 2018-19 to 2020-21. In all these appeals/cross appeals, certain facts are common. Both the parties have raised certain common/ interconnected grounds of appeal, therefore, with the consent of parties, all these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of and reference of facts, the appeal for the A.Y. 2018-19 is treated as a "lead case". In this appeal, the revenue has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 89,83,700/- on account of unexplained cash credit under Section 68 of the Act.*
- 2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 89,83,700/- on account of unexplained cash credit under Section 68 of the Act, ignoring the fact that despite providing sufficient opportunities, the assessee has failed to furnish necessary supporting evidences to substantiate the source of cash found from the possession and also details of the property transactions for which it was claimed to have been transported to Mumbai.*
- 3. It is, therefore, prayed that the order of Id. CIT(A)-4 Surat may be set aside and that of the AO may be restored to the above extent.*

4. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

2. Brief facts of the case are that the assessee is engaged in the business of courier and carting agent which is usually called Angadias. On 04/01/2018, the Central Goods and Services Tax (CGST) Department, Mumbai carried out interception at Mumbai Central Railway Station on 04/01/2018. During such course of interception action, a cash amounting to Rs. 4.29 crore was seized. The information regarding said seizure was forwarded to Income Tax Investigation Wing, Mumbai. On the basis of such information, the DDIT(Inv), Unit-1, Mumbai issued summon under Section 131 of the Income Tax Act, 1961 (in short, the Act) to various parties/Angadias wherein it was discovered that cash and jewelry amounting to Rs. 89,83,700/- belongs to Surat bases Angadias firm (Patel Madhavlal Maganlal & Co." (Assessee). The Investigation Wing of Income tax department also carried out a survey action at Surat office of assessee at 3/145, Parsi Sheri Navapura, Surat and Ratnasagar Building, Varachha, Surat on 11/04/2019. The said survey action was converted into search under Section 132 on 13/04/2019 and concluded on 14/04/2019. Survey action at two offices at Vadodara office of assessee was also converted into search action and concluded on 13/04/2019. During the course of such search, cash of

Rs. 77,02,280/- was seized from various premises of assessee. On the basis of search action, the case of assessee was centralized under Section 127 of the Act.

3. Consequent upon search action, notice under Section 153A dated 16/02/2021 was issued to assessee for furnishing return of income for various assessment years. In response to notice under Section 153A, the assessee filed its return of income for AY 2018-19 on 23/02/2021 declaring income of Rs. 2.30 crores. The Assessing Officer after serving notices under Section 143(2) dated 02/03/2021 proceeded for assessment. During the assessment, the Assessing Officer noted that CGST Department Mumbai in the course of interception on 04/01/2018 seized cash and jewellery worth Rs. 89,83,700/- which also belongs to assessee. Summon under Section 131 of the Act were issued to the employee of assessee firm from whose custody cash was seized in Mumbai. In response to said summon, partner of assessee Shri Kishore Kumar Manilal Patel appeared/attended the hearing and stated that cash of Rs. 89,83,700/- belongs to firm was transported to Mumbai from Rajkot, Bhavnagar and Ahmedabad branches of the firm. He also made statement that cash was being transported for making payment with regard to purchase of property in Mumbai by the assessee firm. Later on the Assessing Officer recorded the statement of Shri Babubhai N.

Patel, partner of the assessee on 03/07/2019. The Assessing Officer recorded that the assessee was asked to produce documentary evidence related to purchase of property for which a cash of Rs. 89,83,700/- was transferred to Mumbai. The Assessing officer recorded that the assessee failed to give any satisfactory explanation. In absence of satisfactory explanation, the Assessing Officer issued show cause notice as to why the entire cash amount of Rs. 89,83,700/- should not be treated as unaccounted/unexplained cash for A.Y. 2018-19. The assessee filed its reply as recorded in para 6.1 of the assessment order. The Assessing Officer recorded that reply of assessee was not accepted. The Assessing Officer was of the view that the assessee simply stated that cash was available in cash book of assessee and provided C.A. certificate. The Assessing Officer not accepted the explanation of assessee and treated the entire cash of Rs. 89,83,700/- as unexplained and added to the income of assessee.

4. Aggrieved by the additions, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The submission of assessee are recorded in para 6.1 of the order of Id. CIT(A). In the written submission, the assessee submitted that a cash of Rs. 89,83,700/- was seized by CGST, Mumbai on 04/01/2018. The cash was transferred to Income Tax Department. During the course of post search proceeding, partner of

assessee was examined. In the statement, the partner of assessee firm was submitted that the cash belongs to firm which was transported to Mumbai from Rajkot, Bhavnagar and Ahmedabad branches of the assessee from their cash balance in hand as per their day to day cash book maintained at respective branches. To support such submission, a certificate of C.A. was obtained and was filed at DDIT (Inv.) Mumbai. Certificate was issued by C.A. after verification of cash book of Rajkot, Bhavnagar and Ahmedabad branches and certified that cash balance on hand of respective branches and such cash was transferred to Mumbai on 03/01/2018. The source of cash seized at Mumbai was fully explained in the hands of firm. The statement of Shri Babubhai N. Patel, partner of Angadiya firm (assessee) was recorded on oath during post search enquiries on 03/07/2019. Further Shri Kishore Kumar Manilal Patel, Mumbai based partner of assessee firm also stated in his statement that the cash was being brought to Mumbai for purchase of property. The assessee reiterated that source of cash in hand of assessee as per cash book and certificate of CA was fully substantiated, so there was no justification to treat the cash as unexplained money only for the reasons that no documentary evidence was produced for property proposed to be acquired. In fact, the said cash was sent by other branches of the assessee firm out of their cash balance as per their

cash book to Mumbai branch. Once its source is proved beyond doubt, the said amount of cash cannot be said to be unaccounted and unexplained.

5. The assessee in its without prejudice submission submitted that the assessee firm maintained cash book at their branches which are subject to audit, day to day cash balance is maintained as per cash book. The cash is generated mainly from the business income on account of Angadias charges, courier charges/commission received during ordinary course of business. All income is supported by Bharatias, receipt books maintained during ordinary course of business. The income credited in the books of assessee are reflected in the return filed under respective Act i.e. Service Tax and GST. The assessee further explained that the cash of Rs. 6,83,700/- from Bhavnagar, Rs. 43.00 lacs from Ahmedabad and Rs. 40.00 lacs from Rajkot was transferred to Mumbai branch. The C.A. certificate was filed before the DDIT (Inv.), Mumbai alongwith all supporting evidences and during assessment, the assessee fully explained and proved beyond doubt that source of said cash with supporting evidences was as per day to day cash book. Assessee further submitted that as per provisions of Section 68, the addition can only be made in case if any sum is found credited in the books of account and the assessee failed to explain the source of said credit

then only Section 68 is applicable. The Assessing Officer treated Rs. 89,83,700/- as unexplained/unrecorded in the books of account. The Assessing Officer has concluded that the said amount is not recorded in the books of account, no addition can be made under Section 68 of the Act, the addition is unlawful and may be deleted.

6. The Id. CIT(A) after considering the submission of assessee noted that in the assessment order, the Assessing Officer has not considered (dealt upon) the submission made by assessee regarding source of cash found at Mumbai Central Railway station. The assessee claimed that the cash found belonged to the assessee and transported from Rajkot, Bhavnagar and Ahmedabad branches to Mumbai. Partner of assessee Kishore Kumar Manilal Patel in his statement before the DDIT(Inv.), Mumbai submitted that the cash belongs to the firm and was shown in the cash book of three branches. The assessee also provided certificate of C.A. All such evidences and submission which was crucial while deciding the liability was ignored by the Assessing Officer. The Assessing Officer presumed that the cash seized was unaccounted belonging to other parties (clients) and accordingly taxed. The Id. CIT(A) during the appellate stage, again asked the assessee to produce the details of cash in hand for three preceeding assessment years. The assessee

furnished such details which are recorded in para 6.3 of the order of Id. CIT(A) in the following manner:

Cash balance as on	Cash in hand at branches	Cash in hand at HO Surat
31/03/2016	3,55,83,010/-	55,16,671/-
31/03/2017	1,72,66,885/-	76,42,739/-
31/03/2018	2,39,67,234/-	38,91,301/-

On perusal of aforesaid details, the Id. CIT(A) was of the view that the assessee was having huge cash balance in its regular course of business. The assessee also furnished the list of branches from which the cash in hand in each branch. All the details are part of balance sheet furnished by assessee alongwith return of income for three preceeding years. All such details were furnished during the assessment proceedings before the Assessing Officer. The Id. CIT(A) recoded that he has verified the availability of cash at the specified branches i.e. Rajkot, Bhavnagar and Ahmedabad from where the cash was transported to Mumbai. The assessee was having opening cash balance of Rs. 45,67,949/- in Rajkot out of which Rs. 40.00 lacs was transferred to Mumbai, Rs. 9,52,907/- was opening balance at Bhavnagar out of which Rs. 6,83,700/- was sent to Mumbai and Rs. 44,56,273/- has opening cash balance at Ahmedabad out of which Rs. 43.00 lacs was transferred to Mumbai. On the basis of his cross verification of opening cash balance and cash transferred, the Id. CIT(A) was of the view that the assessee was having sufficient cash

balance in three respective branches from where the cash was transported to Mumbai. The Id. CIT(A) held that the assessee has proved that they maintained substantial cash balance in its head office and branches which is evident from the cash balance shown for three preceding financial years and the availability of cash on the date of transfer in three branches proved the source of cash found at Mumbai Central Railway station. On the basis of such observation, the Id. CIT(A) held that the addition of cash found and seized was not warranted and directed to delete the entire addition. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before this Tribunal.

7. We have heard the submissions of the learned Commissioner of Income tax- departmental representative (CIT-DR) for the revenue and the learned authorised representative (AR) for the assessee and have gone through the orders of the lower authorities carefully. The Id. CIT-DR for the revenue submits that during the post search enquiry as well as during the assessment proceedings, the assessee failed to furnish any documentary evidences regarding intending purchase of property in Mumbai. A huge cash amount was transported through employee of assessee firm to Mumbai. Partner of assessee was also examined under section 132, who stated that the land deal was finalized by another partner Shri Kishore Kumar

Manilal Patel and he has not produced the documentary evidence.

The books of account of assessee do not represent the true picture of cash amount found from various premises. The assessee merely furnished the cash book of Rajkot, Bhavnagar and Ahmedabad branches does not prove that the cash of Rs. 89,83,700/- is explained. There was no documentary evidence that cash was transferred to Mumbai from Rajkot, Bhavnagar and Ahmedabad branches.

8. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that in response to show cause notice dated 25/09/2021, the assessee filed its reply dated 28/09/2021. In the reply, the assessee fully explained the source of cash intercepted at Mumbai Central Railway station seized by CGST, Mumbai. The assessee explained that the entire cash seized by CGST belongs to assessee firm. The entire cash on primary satisfaction was transferred to Income Tax department. During the course of post search proceedings, the partner of assessee fully explained that cash belongs to assessee firm which was transported from Rajkot, Bhavnagar and Ahmedabad branches. Such cash was sent from cash available at various branches of the assessee which was duly substantiated by filing certificate of CA. Such certificate was furnished by C.A. after verification of cash book of Rajkot, Bhavnagar

and Ahmedabad branches. Copy of such certificate is filed at page No. 95 of paper book. The assessee explained similar fact before the Assessing Officer and substantiated source of cash available with the assessee. The Assessing Officer conveniently ignored the submission of assessee and made addition without discussing the explanation furnished by assessee. The assessee has also filed cash book of assessee at Rajkot, Bhavnagar and Ahmedabad offices. The Id. CIT(A) during the appellate stage, also cross verified the details of cash in hand of assessee in last three assessment years as well as availability of cash at specific branch from where cash was transported to Mumbai. The only objection of Assessing Officer was that the assessee has not given documentary evidence about intending purchase of property. The Id. AR of the assessee submits that such deal was not materialized so the details of property was not made available particularly when the assessee has proved the source of cash beyond reasonable doubt. The Id. AR of the assessee invited the attention of Bench that the assessee has offered taxable income of Rs. 2.30 crores for A.Y. 2018-19. The availability of cash at different branches cannot be doubted vis a vis nature of business activities of assessee. The Assessing Officer has not given any finding on various documentary evidences.

9. We have considered the rival submissions of both the parties and have perused the orders of lower authorities carefully. We find that the Assessing officer made addition of cash seized by CGST, Mumbai at Mumbai Central Railway station only on the ground that the partner of assessee took stand that the cash was transported for purchase of property and the assessee failed to disclose the details of such property. Before the Id. CIT(A), the assessee submitted that they furnished complete source of cash available and transported from various destinations to Mumbai which is not examined and doubted only for ultimate investment/user. The Id. CIT(A) after considering the submission of assessee asked the assessee to furnish the cash in hand in three preceeding assessment years. As per direction of Id. CIT(A), the assessee furnished availability of cash in last three assessment years. Such details of availability of cash is recorded in para 6.3 of order of Id. CIT(A). We further find that the Id. CIT(A) also called and verified the availability of cash at three specific branches from where the assessee claimed to have transported such cash i.e. from Rajkot, Bhavnagar and Ahmedabad branches. Such availability of cash is also recorded by Id. CIT(A) in para 6.5 of his order. We find that the Id. CIT(A) after verification of cash available at three specific branches and the history of cash availability in three preceeding assessment years, took his view that

the addition on cash seized was not warranted when the assessee has proved the availability of cash balance. We also find that the assessee has shown cash balance of Rs. 3.55 crores as on 31/03/2016, Rs. 1.72 crores as on 31/03/2017 and Rs. 2.39 crores as on 31/03/2018. All such figures of availability of cash is not disputed by the Assessing Officer.

10. We find that Hon'ble Gujarat High Court in a similar case of 'Angadia' in CIT Vs Patel Natverlal Chinubhai & Co. (2013) 40 taxmann.com 304-Gujarat, held that when in support of cash seized during search, assessee brought on record its cash book which duly showed that said amount belonged to its particular branch office, amount so seized could not be added to assesses taxable income taking it to be unexplained money. We find that the assessee has shown a taxable income of Rs. 2.30 crores during the year. Before us, the Id. CIT-DR for the revenue failed to bring any contrary fact against the availability of cash in hand for preceeding assessment years at various specified branches from where the cash was transported. Therefore, we do not find any infirmity or illegality in the order/finding of Id. CIT(A) which we affirm. In the result, grounds of appeal raised by the revenue are dismissed.

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

12. Now we take assessee's appeal for A.Y. 2019-20 being IT(SS)A No. 45/Srt/2022 wherein the assessee has raised following grounds of appeal:

- "1. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) should have held the assessment as time barred and assessment order should have been held as illegal, void and nonest. The Ld. Commissioner of Income tax should have annulled, quashed the assessment.*
- 2. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in confirming addition for alleged suppression of commission of Rs. 21,55,608/- on estimated basis.*
- 3. In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in confirming addition for alleged suppression of commission of Rs. 46,436/- on estimated basis.*
- 4. In the facts & circumstances of the case, the addition of Rs. 21,55,608/- & Rs. 46,463/- may be deleted.*
- 5. The appellant craves leave to add to, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of hearing of the appeal."*

The Revenue in its cross appeal in IT(SS)A No. 50/Srt/2022 have raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 1,72,25,981/- under Sec.69C of the Act on account of unexplained salary expenses. Rs.8,43,788/- under Sec.69C of the Act on account of unexplained rent expenses and Rs.4,03,710/- under Sec.69C of the Act on account of unexplained Station & Vehicle Expenses under Sec.69C of the Act without considering the fact that the Assessing Officer has made the addition on the basis of statement of the partner of the assessee-firm recorded under Sec. 132(4) of the Act and comparative details available on record and despite the fact that the assessee has failed to furnish any explanation or details to contradict the findings of the Assessing Officer.*
- 2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in restricting the addition made by the Assessing Officer of Rs.29,73,77,660/- on account of unaccounted /excess commission*

*income to Rs. 21,55,608/- without considering the facts of the case properly and ignoring the findings given by the Assessing Officer in the assessment order.*

3. *In addition and in alternative to Ground No.(2), on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has completely failed to appreciate the fact that the page no. 1 to 6 of Annexure A-2 seized from the premises 3/145, Parsi Sheri, Navapura, Surat bears the date 11.04.2019 i.e. the date of survey (converted into search on 12.04.2019) and this fact has been clearly admitted by Shri Ashokbhai V Patel vide question no. 5 to question no. 9 of statement made under oath on 13.04.2019. Further, as per this document, the amount of cash received by the assessee firm only during half of the day (i.e. time before the survey began) was Rs.1,60,98,990/- while Rs. 1,40,11,250/- had been delivered by that branch by that time and hence, the conclusion of Ld. CIT (A) vide para 7.3 of the appellate order that such quantum of transaction cannot be accepted to be for half day, is perverse on facts.*
4. *In addition and in alternate to Ground No.(2) & (3), on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has made an erroneous presumption in the appellate order (Para 7.4) that details of transactions as per Page 3 and 4 of Annexure A-I pertain to March 2019, placing reliance on the generic statement of Shri Ashok Patel that details pertained to 15-20 days prior to date of survey/search and thereby misleading himself to erroneous finding, ignoring the vital evidence in the form of loose paper (Page 2 of Annexure A-I) found and seized during the course of search proceedings wherein the date i.e. 02.09.2018 has been clearly mentioned.*
5. *In addition and in alternate to Ground No.(2), (3) & (4), on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in interpreting the transactions appearing on page 1 and 2 of Annexure A-I seized from the premises 3/145, Parsi Sheri, Navapura, Surat and considering the total amount of commission earned only on delivery of parcel of Jewellery and Diamonds amounting to Rs.96,41,640/- to be as the total amount of cash transferred by the firm and accordingly reaching to erroneous conclusion in regard to the commission earned by the assessee.*
6. *In addition and in alternate to Ground No.(2), (3), (4) & (5), on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that on the basis of 32 transactions appearing on page 1 and 2 of Annexure A-I, the actual amount of commission earned by the assessee firm amounts to Rs.3,29,43,626/- and based on which single day commission income was worked out by*

AO at Rs. 10,29,488/- (Rs. 3,29,43,626/32 days) and accordingly the commission income for the entire year was estimated at Rs.32,22,29,841/- for the entire year (excluding Sundays).

7. *In addition and in alternate to Ground No.(2), (3), (4), (5) & (6), on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in estimating the amount of annual commission at Rs. 4,62,768/- on the basis of Page No.1 & 2 of Annexure A-I for 15 days by considering commission income @ Rs.200 per Rs. 1 lakh ( Exhibit 1 of the appellate order which is only partial reproduction of the actual figures appearing on the seized documents and it reflects only of the commission earned on delivery of parcel of Jewellery and Diamonds and the sum thereof and does not reflect the commission income earned on the transfer of cash).*
8. *In addition and in alternate to Ground No.(2), (3), (4), (5), (6) & (7). on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in relying on undated and unverifiable transactions appearing on page 3 and 4 of Annexure A I, to conclude that the total amount transferred in the month of March is Rs. 7,65,65,110/- which is clearly out of place in comparison to the actual amount of Rs. 1,40,11,250/- transferred by Surat branch of the assessee during half of the day (on the day of survey/search action), as recorded on Pg No 1 of Annexure A2.*
- 9) *On the facts and in the circumstances of the case and in law. the Ld.CIT(A) has erred in restricting the addition made by the Assessing Officer of Rs.2,32,18,000/- on account of unaccounted/excess commission income to Rs.46,436/- by observing that the amount worked out by the AO was actually the amount of cash transferred by the assessee and not the commission income without appreciating the fact that the Assessing Officer has worked out the commission income on the basis of digital data extracted from the mobile of the employee of the assessee-firm and as available in the incriminating documents and also on the basis of the statement recorded during the course of search proceedings.*
10. *It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*
11. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.*

13. As recorded in the facts for A.Y. 2018-19, a search was conducted on 12/04/2019 at the office premises and branch offices. Notice

under Section 153A of the Act was served upon the assessee. In response to notice under Section 153A of the Act, the assessee filed return of income on 23/02/2021 declaring income of Rs. 16,58,880/- . The assessment was completed under Section 153A r.w.s. 153(3) of the Act on 30/09/2021. The Assessing Officer made *ad hoc* addition on account of salary expenses of Rs. 1,72,25,981/-, unexplained expenditure of rent expenses of Rs. 8,43,788/-, both the additions under Section 69C, addition on account of suppression of commission income of Rs. 29,73,77,660/- and addition on account of images found in the mobile phone of employee of Rs. 2,32,18,000/-. On appeal before the Id. CIT(A), the additions on account of commission income was restricted to Rs. 21,55,608/- and other additions on account of rent expenses and employee expenses were deleted.

14. Further aggrieved, both the parties have filed their respective appeals. The revenue has filed appeal against restricting the commission income to the extent of 21,58,608/- and on deleting the addition of unexplained salary expenses, rent expenses and vehicle expenses. On the other hand, the assessee has challenged the action of Id. CIT(A) in restricting the addition income to the extent of Rs. 21,55,608/-.

15. We have heard the rival submissions of both the parties and perused the record carefully. Ground No. 1 in assessee's appeal relates to validity of assessment order passed after the time limit for passing the assessment order. We find that no submissions were made by Id AR for the assessee, therefore, this ground of appeal is dismissed as not pressed. Ground No. 1 of revenue's appeal relates to deleting the addition of Rs. 1.72 crore on account of unexplained salary, deleting the addition of Rs. 8,43,788/- on account of loan expenses and Rs. 4,03,710/- on account of unexplained stationary and vehicle expenses. The Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that during post search proceedings, statement of partner of assessee Babubhai N. Patel was recorded on 03/07/2019. Further his statement was recorded during the assessment on 26-27/12/2020. In the statement, the partner furnished approximate details of the employee i.e. at Surat-15, Mumbai-25, Ahmedabad-20, Baroda-12, Delhi-10, Rajkot-12 and Bavnagar-10 and disclosed their salary varying from Rs. 5,000/- to Rs. 20,000/- at different rate at different locations. He also stated that in other office, there are one or two employees. As per the estimate of partner, approximately 104 employees were working with the assessee firm. The Assessing Officer on considering the fact that the assessee firm has 20 small branches and if two employees

are working at all small branches, the total employees of the firm will be 144. The Assessing Officer worked out the average salary of Rs. 12,000 per month employed by 144 thereby worked of the Act the employees cost of Rs. 2,07,36,000/-. However, the assessee in its books of account has debited the salary of Rs. 35,10,019/-. The Assessing Officer find a huge difference in the salary expenses qua the persons employed. The Assessing Officer after issuing show cause notice, and receiving reply thereof, not found satisfactory explanation, worked out the salary expenses of Rs. 1,72,25,981/- (Rs. 2,07,36,000 – 35,10,019/-). The Id. CIT(A) deleted the salary expenses by taking a view that the Assessing Officer made addition on the basis of approximate figure of employees. It was held that during the course of statement of partner, no question was asked about the expenses debited in the P&L account on account of salary expenses only a general question was asked. No addition in other assessment year was made purely on presumption basis. The Id. CIT-DR for the revenue submits that the additions were made on the basis of admission of partner of assessee who himself given idea of number of employees and addition was made on logical and prudent basis while inferring the number of employees at 134 in all branches of the assessee.

16. On the addition of rent expenses, the Id. CIT-DR for the revenue submits that during the assessment, the Assessing Officer noted that the assessee has debited Rs. 20,36,212/- as rent expenses for F.Y. 2018-19. On the basis of such figure, the monthly rent was calculated to Rs. 1,69,684/-. The assessee was issued show cause notice to substantiate the expenses and to furnish the details of office at various places which are owned or taken on rental basis. The assessee failed to furnish complete details, PAN number of persons to whom rent was paid. In absence of complete details, the Assessing Officer worked out the rental expenses @ Rs. 12,000/- pm for 20 offices at different locations thereby calculated rental expenditure of Rs. 2.40 lacs in place of Rs. 1,69,684/- claimed by assessee. The Assessing Officer worked out the differences of Rs. 8,43,788/- (28,80,000 – 20,36,212). The Id. CIT(A) deleted the addition by taking a view that such addition is without any evidence or incriminating material. The addition is made on approximate figure. No such query regarding the rental expenses was raised during the statement of partner recorded at the time of survey. No addition in other assessment years were made.
17. On the issue of stationary expenses and vehicle expenses, the Id. CIT-DR submits that the assessee has debited stationary expenses of Rs. 4,37,810/- and vehicle expenses of Rs. 3,58,480/-. The employee

of assessee are extensively travelling from one place to another place through trains or motor vehicle to deliver the various parcels of jewelry, diamond and cash from one place to another place. The assessee on show cause notice, the assessee simply stated that most of the delivery of the parcels and cash within the city and made by the employees on bicycles. No details of such employees and city in which transport was made on bicycle, and no logbook for examination was provided. The Assessing Officer on the basis of volume of business and frequency of travelling on day to day basis and process involved in business activities, the Assessing Officer reasonably estimated the expenses of Rs. 12.00 lacs against the total expenses of Rs. 7,96,290/- and the difference of Rs. 4,03,710/- (12,00,000 – 7,96,290) for whole of the year. The Id. CIT(A) deleted the addition by taking similar view as took with regard to salary and rent expenses that addition is made without any incriminating material or no such addition in other years were made.

18. On the other hand, the Id. AR of the assessee submits that the Assessing Officer made addition on account of salary expenses, rent expenses, stationary and vehicle expenses purely on estimation basis on a general statement of Babubhai N Patel, partner of the firm without bringing on record any incriminating material to show that the assessee made any expenses on the addition to the expenses

debited in the P&L account. Search was conducted on 12/04/2019, the statement recorded on that date will apply for the employee working on that day and not for the earlier years. The Id. AR submits that the Assessing officer made presumption merely on the basis of statement which was made on estimation basis, no exact number of employees was disclosed by the partner, no addition merely on the basis of statement unless any corroborative evidence found during the search can be made.

19. On the addition of rent and stationary expenses, the Id. AR of the assessee submits that the Assessing Officer made addition purely on assumption and presumption basis without any evidence. The assessee debited actual expenses in P&L account. The Assessing Officer made ad hoc addition, the Id. CIT(A) appreciated the facts and deleted the addition. To support such submission, the Id. AR of the assessee relied upon the following decisions;

- Delhi High Court in the case of Pr.CIT Vs. Anand Kumar Jain HUF in ITA No. 5385, 5516,5522, 5524 to 5526 & 5540 of 2021, dated 12.02.2021.
- Pradeep Kumar Sharma Vs DCIT (2021) 132 taxmann.com 41,
- CIT Vs Mauli Kumar Shah (2008) (2021) 307 ITR 137 Gujarat,
- Savaliya Buildcon Vs DCIT, in ITA No 401/Ahd/2014 ,
- DCIT Vs Hitesh M Bagdai IT (SS) No. 3/Rjt/2013.

20. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We

find that as per the Assessing Officer, statement of Babubhai N. Patel was recorded on 26-27/12/2020 i.e. during the assessment, he was asked to give the details of employees working in various branches and the salary paid to them. The Assessing Officer on the basis of figures of employees provided by partner with the firm at various branches worked out the average salary and multiplied with the employee, the Assessing Officer also added 40 employees by taking average two employees at 20 other places of business of assessee. The assessing officer on the basis of his estimation, worked out the salary of 144 employees @ Rs. 12000/-pm. The assessee has debited expenses of Rs. 35,10,019/- in its P&L account. Thus, the Assessing Officer worked out the addition of Rs. 1,72,25,891/- (Rs. 2,07,36,000 – Rs. 35,10,019). The assessee explained that salary expenses were incurred for total 68 employees and all were registered under Provident Fund Act. Before the Id. CIT(A), the assessee submitted that there was no incriminating evidence for payment of salary from unaccounted sources. Moreover, the partner has given answer on approximate without reference to any record found or seized during the course. We find that the Id. CIT(A) on appreciation of fact, held that the Assessing Officer has not brought any incriminating material or evidence on record that the assessee has incurred any unexplained expenditure. The addition is made only in the A.Y. 2019-20 only. No

addition in earlier or succeeding year was made. The statement of partner was recorded in December, 2020 which perhaps relate to A.Y. 2021-22. The Assessing Officer worked out the addition in a casual manner without reference to any incriminating material or corroborative evidence. The assessee has furnished list of their employee alongwith details of salary and only 68 employees are working and their total salary debited for the year is Rs. 31,07,326/- . On the basis of such observation, the Id. CIT(A) deleted the entire additions. Before us, no contrary fact or evidence or any law is brought to our notice by the Id. CIT-DR except relying on the order of Assessing Officer. Thus, we do not find any infirmity in the order of Id. CIT(A). The addition is made on mere assumption and presumption without any evidence on record. Thus, this part of ground of appeal is dismissed.

21. So far as addition of rent expenses of Rs. 8,43,788/- and Rs. 4,03,710/- stationary and vehicle expenses is concerned, we find that the Assessing Officer made these two additions on the basis of fact that main branches of the assessee are in metro cities like, Delhi, Mumbai, Surat, Baroda, Ahmedabad, Rajkot and Bhavnagar. The assessee has 20 other placed in various districts of Gujarat. The Assessing Officer on the basis of rent expenses debited by assessee worked out the monthly rent expenses. The Assessing Officer was of

the view that the fair estimate of rent expenses would be Rs. 12,000/- per month for 20 offices thereby worked out the monthly rent of Rs. 2.40 lacs and multiplied by 20 thereby worked out the total estimation of rent expenses of Rs. 28,80,000/-. The assessee has shown total rent expenses at Rs. 20,36,212/- thereby difference of Rs. 8,43,788/- was worked out. The Id. CIT(A) deleted the addition by taking a view that there is no basis for making ad hoc addition of rent expenses. The addition is not based on any evidence. No specific question about the rental expenses of different stations were asked to the partner of assessee at the time of recording his statement. Similarly, for stationary and vehicle expenses, the Assessing Officer on the basis of his view that vehicle and stationary expenses, keeping in view the nature of business and frequency of travelling would be fair if estimated at Rs. 1.00 lacs per month thereby estimated Rs. 12.00 lacs for whole of the year. The assessee has already debited Rs. 7,96,290/- thereby the Assessing Officer worked out the addition of Rs. 4,03,710/- (Rs. 12,00,000-7,96,290). We find that the Id. CIT(A) deleted the addition by taking a view that the addition is not based on any evidence. No evidence on unexplained expenditure was found during the search. The Id. CIT(A) thereby deleted both the additions i.e. stationary and vehicle expenses. Before us, except relying on the order of Assessing Officer, no contrary fact or evidence was brought

to our notice by the Id. CIT-DR, therefore we do not find any reason to interfere with the finding of Id. CIT(A) which we affirm. In the result, ground No. 1 of revenue's appeal is dismissed.

22. Ground No. 2 to 8 of revenue's appeal relates to restricting the addition of commission expenses to the extent of Rs. 21,55,608/-. The assessee has also raised ground of appeal against restricting the addition to that extent. Thus, the issue in both the appeals are taken together. Though, the revenue has raised multiple ground of appeal in alternative to each other, which are nothing but a narration of facts only, thus all grounds are considered together. The Id. CIT-DR for the revenue submits that during the survey proceedings on 11/04/2019, statement of Ashokbhai V Patel was recorded under Section 131 of the Act. During recording his statement, he stated that page No. 3 and 4 of Annexure-A-1 contains certain details of commission expenses earned, the amount transferred and pertains to Surat office of their firm for March, 2019. The commission details on the date of search represent the commission income written for half day only. Based on entries writings on page No. 3 and 4 of Annexure A-1, the commission income comes to Rs. 1,41,070/- and the cash transfer is Rs. 7.69 crores. The said commission income is of Surat office for half day only. The Assessing Officer during the assessment, noted that the assessee has offered commission income

in the return of income of Rs. 2.485 crores. The Assessing Officer on the basis of statement of employee worked out the commission for whole of the year by excluding Sundays. The Assessing Officer estimated the commission income of all the branches and the assessee at Rs. 10,29,488/- per day and by excluding 52 Sundays, the Assessing Officer multiplied the income of 313 days and worked out the total commission income at Rs. 32,22,29,841/- and after granting set off commission income declared at Rs. 2,48,52,181/- worked out the difference of Rs. 29,73,77,600/-. The Id. CIT(A) restricted the addition to the extent of Rs. 21,55,608/- by taking a view that the details found during the search was for the month of March 2019 i.e. a month prior to date of search. Once it is accepted that transactions are for the month of March, 2019, efforts were made to find out whether these transactions are part of transactions recorded in the books of account. It was held that the transaction found in the papers were totally independent to the transactions recorded in the account and the income earned from these sets of transactions need to be separately taxed to the income offered by the assessee. On page No. 1 and 2 of Annexure-A-1, the details of 32 transactions for 15 days of khep (transfer of cash) of Rs.96,41,640/- during the said period and considering the commission @ Rs. 200 per one lac, the total commission is Rs.

19,292/- and worked out the entire commission. The Id. CIT(A) worked out the commission outside the book of Rs. 16,92,840/- on the basis of his observation and restricted the addition to the extent of Rs. 21,55,608/-. The Id. CIT-DR for the revenue submits that the Assessing Officer made the addition on the basis of statement of employee and the various noting found on page No. 3 and 4 of Annexure-A-1. The Id CIT-DR for the revenue prayed to restore the addition made by assessing officer.

23. On the other hand, the Id. AR of the assessee submits that the Assessing Officer made addition by making the basis of seized material found during the course inventorised as page No. 1 to 4 of Annexure-A-1 which shows that the cash was transferred to one place to another place on commission basis. Further the Assessing Officer made basis of statement of Ashokbhai V. Patel employee of firm who admitted that noting on such pages are with regard to firm. The Assessing Officer made addition on the basis of his working that income for half of the day is Rs. 1,41,070/-. The Assessing Officer on the basis of such figure estimated the commission income for all the branches at Rs. 10,29,488/-per day and after excluding the Sundays, worked out total commission of Rs. 32.22 crores. Entire addition based on hypothetical basis. The Id. CIT(A) estimated the commission income @ Rs. 200 per lac which is coming out of seized material

found during the search itself. In the seized material, the amount of commission, name of party, amount of cash and place from where it has come, all are mentioned. The Id. CIT(A) on his appreciation deleted the addition made by Assessing Officer. The Id. CIT(A) worked out the commission income from seized material at page No. 1 and 2 of Annexure-A-1 at Rs. 19,282/- and on the basis of statement of employee by treating it for the period of 15 days and therefore, extrapolated commission for whole of the year. Similarly, on page No. 3 and 4 of Annexure-A-1, the Id. CIT(A) worked out the commission of Rs. 1,41,070/- for 15 days and extrapolated the commission for whole of the year and confirmed the addition of Rs. 16,92,820/-. Thus, the total addition confirmed by the Id. CIT(A) is Rs. 21,55,608/-. The Id. AR of the assessee submits that as per the trade practice, the commission earned by assessee is at Rs. 100/- per lacs which has been offered in the return of income. The Id. AR of the assessee submits that the addition confirmed/sustained by the Id. CIT(A) is also liable to be deleted.

24. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. The Assessing Officer made addition of Rs. 29,73,77,640/- by taking a view that during the statement of Ashok Bhai Pate, recorded under section 131 on 13.04.2019, he stated that page No. 3 and 4 of Annexure-A-1

contains certain details of commission expenses earned, the amount transferred and pertains to Surat office of their firm for March, 2019. No date is mentioned on the pages, thus, the assessing officer presumed that it is pertain to the date of search i.e. 11.04.2019. The assessing officer also took his view that commission details on the date of search represent the commission income for half day only. Based on entries written on page No. 3 and 4 of Annexure A-1, the commission income comes to Rs. 1,41,070/- and the cash transfer is Rs. 7.69 crores. The said commission income is of Surat office for half day only. The Assessing Officer during the assessment, noted that the assessee has offered commission income in the return of income of Rs. 2.48 crores. The Assessing Officer on the basis of statement of employee worked out the commission for whole of the year by excluding Sundays. The Assessing Officer estimated the commission income of all the branches and the assessee at Rs. 10,29,488/-per day and by excluding 52 Sundays, the Assessing Officer multiplied the income by 313 days and worked out the total commission income at Rs. 32,22,29,841/- and after granting set off commission income declared at Rs. 2,48,52,181/- worked out the difference of Rs. 29,73,77,600/-.

25. We find that before the Id. CIT(A), the assessee filed detailed written submission explaining the entire facts. The Id. CIT(A) after

considering the contents of assessment order, submission of the assessee, upheld the addition to the extent of Rs. 21,55,608/- by taking a view that the addition made by the assessing officer is not based on incriminating material. Page No. 1 and 2 contains the details of 32 transactions for about 15 days and total amount of Khap (transfer of cash) is Rs. 96,41,640/-, during the said period and considering the commission income at Rs. 200/- per lacs, the commission is estimated to Rs. 19,292/-. Considering this amount of commission, which is outside the book of the amount for a fortnight (15 days), the entire year's income is estimated at Rs. 4,62,768/-. Such tabulated excel sheets were made as exhibit-1 of his order. The Id. CIT(A) further noted that on page 3 and 4 there are details of 476 transactions for the month of March, 2019, in this sheet, the amount of commission has been specified. Total amount in March, 2019 was transferred is Rs. 7.65 crores and amount of commission is Rs. 1,41,070/-. Considering the fact that commission is earned outside the books of account for a month, the entire year income was estimated/worked out at Rs. 16,92,840/- (1,41,070 x 12). Such details were also made a part of order by the Id. CIT(A) as Exhibit-II. Thus, on the basis of his working, the Id. CIT(A) upheld the addition to the extent of Rs. 21,55,608/- (4,62,768 +16,92,840) thereby granted relief to the assessee. Before us, the Id. AR of the assessee

vehemently argued that as per the trade practice, the commission earned by assessee is at Rs. 100/- per lac which has been offered in the return of income. We find that addition made by Assessing Officer is not based on incriminating material. The addition was made on hypothetical and presumption basis. The Id. CIT(A) is also on the basis of details mentioned in Exhibit-II presumed that the assessee earned commission @ Rs. 200/- per one lacs, without bringing any adverse material on record. No specific question is raised by the Id. CIT(A) while considering the commission income @ Rs. 200/- as a transfer charges for per lacs amount.

26. We find that Delhi Tribunal in Pradeep Kumar Sharma Vs DCIT (supra) held that where assessing officer made addition to the income of the assessee on the basis of certain material found and seized during search conducted upon a colleague of assessee and his wife showing that assessee had received illegal commission of certain amount, since no incriminating material was found during search conducted upon the assessee and further, even such incriminating material on the basis of which said addition was made did not disclose name of assessee or material as to how assessee was connected with the seized material, such impugned addition was not justified.

27. We further find that combination of this bench in ITO Vs Deepak Vithaldas Suchak in ITA No. 361/Srt/2018 dated 30.07.2021, in a

case of assessee who were engaged in cheque discounting business, the assessing officer made addition of entire bank deposits, however on appeal the Id CIT(A) the assessee took plea that in earlier year they have offered commission income on similar business @ Rs. 30/- to 40/- per lacs, which was accepted by assessing officer. The Id CIT(A) on considering their plea restricted the addition @ Rs. 50/- per lacs. On further appeal before Tribunal, the commission income was increased to Rs.75/- per lacs.

28. We find that addition of commission income sustained by Id CIT(A) is not purely based on the incriminating material, rather based on his exercised assumed on presumption that a uniform commissions was earned. We find that the assessee has categorically pleaded that they are charging commissions @ 100/- per lacs transferred/ transported from one place to other place and has shown such commission in their regular books of accounts. Such books of accounts of the assessee is not rejected. Thus, we do not find any justification for addition sustained by the Id CIT(A). As recorded above that in case of ITO Vs Deepak Vithaldas Suchak (supra), we have made addition @ 100/- per lacs on cheque discounting business against their plea of Rs. 30 to 40/- per lacs, therefore we find that the assessee has reasonably offered the income in their profit and loss account @ Rs. 100/- per one lacs as commissions income. Hence, the assessing

officer is directed to delete the entire additions sustained by Id CIT(A). In the result, ground No. 2 is allowed.

29. In view of the aforesaid discussion, ground No. 2 to 8 in appeal of revenue is dismissed and the ground No. 2 in assessee's appeal is partly allowed.

30. The next ground being ground No. 9 in revenue's appeal relates to restricting the addition on unaccounted/excess commission of Rs. 2.32 crores to the extent of Rs. 46,436/-. We find that the assessee has also raised ground against restricting the commission income to the extent of Rs. 44,436/-. During the hearing, the Id. AR of the assessee submits that he is not pressing this ground of appeal. Considering the submission of Id. AR of the assessee, ground No. 3 of the assessee's appeal is dismissed being not pressed.

31. So far as ground of appeal raised in revenue's appeal is concerned, the Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that during the search proceedings, various images were extracted from mobile phone of Ashokbhai V. Patel. Such images show certain transactions. In response to show cause notice, the assessee simply denied that such images do not pertain to assessee firm. These images pertain to cash transactions, however, the assessee failed to furnish complete details of these transactions. The total addition of the

images of transactions were of Rs.2,32,18,000/-. The Assessing Officer made addition in absence of proper explanation. The Id. CIT(A) restricted the addition to the extent of Rs. 46,436/-. The Id. CIT(A) held that the total transaction of Rs. 2.32 crores at the most can be treated as cash transferred from one place to another place for commission. Therefore, the maximum amount can be brought to tax only @ 200 per lac which comes to Rs. 46,436/-. The Id. CIT-DR for the revenue submits that the decision of Id. CIT(A) is not acceptable for the reasons that the Assessing Officer worked out the addition from various images which were extracted from mobile phone of Ashokbhai V Patel. Neither the assessee nor Ashokbhai V Patel accepted the fact that images relate to business of assessee firm. The Id. CIT(A) mentioned that these transactions relate to cash transfer, however, the assessee firm failed to explain to whom such cash was transferred or the cash was not transferred or it was returned back. The assessee firm failed to prove such transactions were not executed. In absence of documentary evidence, the addition in the hand of assessee firm was to be sustained.

32. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that the Assessing Officer failed to bring any evidence that such cash transaction was actually executed. The assessee throughout the proceedings, denied

any transaction which was solely based on the images found in the mobile of Ashokbhai V Patel. The assessee has not executed any such order. In absence of any corroborative evidence, no such addition was warranted. The Id. AR of the assessee submits that considering the smallness of addition, he has not pressed the additions sustained to that extent, however, he supports the order of Id. CIT(A) to the extent relief is granted to the assessee.

33. We have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. We find that the Assessing Officer made addition of Rs. 2.32 crores solely on the basis of images extracted from the mobile phone of Ashokbhai V Patel. We find that the assessee throughout the proceedings, denied any such transactions. We find that the Id. CIT(A) despite the fact that the assessee denied any such transaction reflected in the impugned images held that the at the most, it can be treated as cash transferred from one place to another place and maximum can be brought to tax, the commission at the market rate of Rs. 200/- per lacs and worked out the addition to the extent of Rs. 46,436/-. We find that the Assessing Officer has not brought any evidence on record to substantiate such addition. Once the Assessing Officer has accepted the business of assessee as of Angadias/courier services at the most only transaction charges/commission can be added and not the

substantial or entire amount allegedly reflected in the images. We find that the Id. CIT(A) taxed the commission income @ Rs. 200 per lacs and sustained the addition to the extent of Rs. 46,436/-. In our view, the commission added by the Id. CIT(A) does not require any further interference, which is sufficient to avoid the possibility of revenue leakage. Thus, we affirm the order of Id. CIT(A).

34. In the result, the appeal of the revenue is dismissed and the cross appeal of the assessee is partly allowed.

35. Now we take revenue's appeal in ITA No. 202/Srt/2022 and cross appeal of assessee in ITA No. 184/Srt/2022 for the A.Y. 2020-21. In ITA No. 202/Srt/2022, the revenue has taken following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing to verify the cash balance and grant consequent relief for the addition to the extent of Rs.57,92,540/-[77,07,280/- - Rs. 19,14,740/- ( 15,67,170/- + 3,47,570/-)] made by the Assessing Officer on account of unexplained cash under Sec.68 of the Act even though the assessee has completely failed to furnish any details/evidences to explain the unaccounted cash seized either during the course of search/post search proceedings or during the course of assessment/appellate proceedings.*
2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the addition made by the Assessing Officer of Rs. 17,29,16,910/- on account of unexplained cash balance to Rs.3,45,834/- being the commission income worked out @ Rs.200/- per lakh, without appreciating the fact that the addition was made on account of unexplained cash balances and that the assessee was unable to explain the cash balances shown in different offices or reconcile the difference in physical cash found during the course of search with the cash balances shown in the books of accounts, despite opportunities given during and after the post search proceedings and in assessment proceedings.*

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition made by the Assessing Officer of Rs. 17,29,16,910/- on account of unexplained cash balance to Rs.3,45,834/- being the commission income worked out @ Rs.200/- per lakh, by observing that the assessee was engaged in the business of Angadiaya and the amounts were received from various parties for transferring them to other branches of the assessee-firm, ignoring the fact that the assessee was unable to furnish the details of the parties from whom such amounts were received for transferring from one place to another, and ignoring the facts stated by the partner, Shri Babubhai N. Patel that the said cash balance also involve some 'kachha cash'(out of books).*
4. *It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”*

The assessee in its cross appeal in ITA 184/Srt/2022 has raised following grounds of appeal:

- “1. *In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) should have held the assessment as time barred and assessment order should have been held as illegal, void and nonest. The Ld. Commissioner of Income tax should have annulled, quashed the assessment.*
2. *In facts and circumstances of the appellant's case, the Ld. Commissioner of Income Tax (Appeals) should have deleted the addition of cash found from the head office Surat amounting to Rs. 21,44,960/- as it is part of the cash balance as per the cash book of the appellant firm and all the evidences including cash book was submitted during the course of assessment proceedings and Ld. Commissioner of Income Tax (Appeals) should not have directed AO to examine the appellant's claim and if appellant had cash in hand of Rs 48,34,173/- as on the date of survey/search, no further addition is warranted in respect of cash found from the head office at Surat.*
3. *In facts and circumstances of the appellant's case, the Ld. Commissioner of Income Tax (Appeals) should have deleted the addition of cash found from the branch office at Lehipura Vadodra amounting to Rs 9,83,480/- as it is part of the cash balance as per the cash book of the branch office at Lehipura Vadodra of the appellant firm and all the evidences including cash book was submitted during the course of assessment proceedings*

*and Ld. Commissioner of Income Tax (Appeals) should not have directed AO to examine the appellant's claims and if appellant had cash in hand on the date of survey/search, no further addition is warranted in respect of cash found from the branch office at Lehripura Vadodra.*

4. *In facts and circumstances of the appellant's case, the Ld. Commissioner of Income Tax (Appeals) should have deleted the addition of cash found from the branch office at Lehripura Vadodra amounting to Rs 26,64,100/- belonging to various constituents received for transfer during the ordinary course of the angadia business and all the evidences of receipt of cash during the course of angadia business were found during the course of search and was also submitted during the course of assessment proceeding and Ld. Commissioner of Income Tax (Appeals) should not have directed AO to examine the details submitted of the clients from whom the cash was received and if the details are found to be in order the AO shall accept the cash as found from explained sources.*
5. *In the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in estimating addition for alleged commission of Rs. 3,45,835/- on estimated basis.*
6. *The appellant craves leave to add, alter and/or amend the above ground/grounds of appeal either before or at the time hearing of the appeal.*

36. Facts in brief are that the assessee filed its return of income on 12/01/2021 declaring income of Rs. 19,26,270/-. The return of assessee was taken for scrutiny. The assessment was completed under Section 143(3) of the Act on 30/09/2021. The Assessing Officer while passing the assessment order, made addition of Rs. 77,07,280 on account of unexplained cash and addition of Rs. 17.29 crores on account of unexplained cash credit. On appeal before the Id. CIT(A), the addition of unexplained cash of Rs. 77,07,280/- was restricted to Rs. 19,14,740/- and the addition on account of commission income of Rs. 17.29 crores were restricted to Rs. 3,45,834/-. Thus, aggrieved

by the order of Id. CIT(A), both the parties have filed their respective appeals.

37. The assessee has raised grounds of appeal in restricting the addition of cash found at Surat office to the extent of Rs. 19,14,740/- and commission income restricted to Rs. 3,45,834/-. And revenue in its appeal has raised its plea in restricting the addition of commission income to the extent of Rs. 3,45,834/-

38. We have heard the submissions of both the parties and have gone through the orders of lower authorities carefully. Ground No1 is assessee's appeal related to validity of assessment order passed beyond the time limit. No submissions were made by Id AR for the assessee, thus, this ground of appeal is treated as not pressed and dismissed as such.

39. Ground No. 1 revenue's appeal relates to restricting the addition of cash found to the extent of Rs. 19,14,740/-. The assessee has also raised cross grounds of appeal in ground No. 2, 3 and 4 in their appeal. The Id. CIT-DR for the revenue submits that during the course of search and seizure action, total unaccounted cash of Rs. 77,02,280/- was seized out of which Rs. 15,67,170/- from Varachha branch, Rs. 21,44,960/- from Navpura Branch, Rs. 36,47,580/- from M.G. Road Branch, Vadodara and Rs. 3,47,570/- from Alkapuri Branch, Vadodara. The Assessing Officer asked the assessee to

explain the cash seized during the search proceedings. The assessee simply stated that this cash is already accounted for. The assessee failed to furnish complete details regarding source of cash during the assessment proceedings which remained unexplained till finalization of assessment order. As per observation of Id. CIT(A) regarding the cash of Rs. 15,67,170/- and Rs. 3,47,570/- being offered to tax, on verification, it was found to be correct and finding of Id. CIT(A) is acceptable to that extent. So far as cash of Rs. 21,44,960/-, Shri Rasikbhai N. Patel, who was employee of assessee categorically stated that during the recording of statement on 11/04/2019 that this amount is not recorded in the books of account. Shri Ashokbhai V Patel failed to corroborate the statement made regarding the said amount as to how this amount is reflected in the books of assessee. Shri Ashokbhai V Patel was manager of assessee and was responsible for keeping a track of cash transfer and commission income of assessee. The assessee accepted amount of Rs. 3,47,570/- seized from Alkapuri (Baroda) premises and Rs. 15,67,170/- from Varachha road, Surat branch as unaccounted income of firm, therefore, books of assessee do not represent the true picture. Hence, merely taking stand that cash of Rs. 21,44,960/- is part of cash balance as per cash book is not acceptable as per statement of Ashokbhai V Patel that books of account, Bharatiya are not fully correct and that various

transactions are not recorded in the books. Therefore, seized amount of Rs. 21.54 lacs is not acceptable. So far as cash of Rs. 9,84,480/- is concerned, the said amount is a part of cash in hand as claimed by assessee. During the course of statement of Shri Amit Kumar M Patel recorded on 12/04/2019, he in response to question No. 10 and 11, confirmed that closing balance of cash as on 05/04/2019 was Rs. 45,96,042/-. Shri Vishnubhai v. Patel, Manager, also stated that there is discrepancy in the closing balance as Amitkumar M Patel has taken certain amount from closing balance. Vishnubhai V. Patel told that amount of Rs. 35.00 lacs was taken by Amitkumar M Patel, however, both failed to furnish corroborative evidence to prove their contention. Further figure of cash reflecting in the cash book cannot be accepted as source of cash seized i.e. Rs. 9,83,480/-. The assessee made effort to make out book cash as a part of cash book to explain the source of cash seized which is not acceptable. The Id. CIT-DR submits that the Id. CIT(A) directed to verify the claim of cash of Rs. 26,64,100/-, found and seized and the addition of amount has been made in the assessment order. The assessee made effort to explain the source of Rs. 9,83,480/- and Rs. 26,64,100/- (i.e. Rs. 36,47,580/-). If the explanation of cash of Rs. 26,64,100/- is perused, the assessee tried to explain it but there is contradiction in the factual submission and the total sum of Rs. 26,74,100/- and 9,83,480/-

comes out to be Rs. 36,57,580/- and not Rs. 36,47,580/-. At the time of recording statement of Amitkumar M. Patel on 12/04/2019 that out of Rs. 36,47,580/-, the amount of Rs. 9,46,080/- belongs to assessee which is contrary to the contention of assessee made during the assessment proceedings.

40. On the addition of Rs. 17.29 crores added by Assessing Officer, the Id. CIT-DR submits that during the assessment, the partner of assessee was asked to give the complete details of the customers who have transferred their cash through assessee firm. However, the partner of assessee firm stated that he does not have details available with him. In reply to question No. 10, the partner of assessee stated that some of the amount involved from the assessee firm but no accounts were provided. The assessee during the assessment as well as appellate proceedings, failed to furnish complete reconciliation and the details of entities whose cash was transferred as recorded on page no. 1 to 6 of Annexure-A1. The assessee's contention regarding availability of cash balance on the basis of said Annexure was not acceptable as the assessee has admitted that it was involved in out of books transaction and even offered to tax the excess cash found during the search proceedings, therefore, the addition was made by Assessing Officer to the extent of transaction amount of Rs. 17.29 crores were correct. The Id. CIT-DR for the revenue submits that the

Id. CIT(A) restricted the addition to the extent of Rs. 3,45,834/- by holding that the impugned cash held by the assessee in the regular course of its business cannot be taxed as the income of assessee and the commission earned on such cash transfer is to be taxed. The Assessing Officer was directed to take the commission @ Rs. 200 per lac of cash handed thereby worked out Rs. 3,45,834/- (Rs.  $17,29,16,910/1,00,000 \times 200$ ). The Id. CIT-DR for the revenue submits that the assessee has challenged this addition in their cross appeal. The Id. CIT-DR prayed to sustain the entire addition made by the Assessing Officer.

41. On the other hand, the Id. AR of the assessee submits that the ground No. 1 in revenue's appeal and ground Nos. 2 to 4 in assessee's appeal are interconnected. During the course of search, a cash of Rs. 77,07,280/- was found, out of which the assessee has accepted and disclosed as income in the return of income as unaccounted cash of Rs. 15,67,170/- found at Varachha Branch and Rs. 3,47,570/- found from Alkapuri (Baroda) branch aggregating of Rs. 19,14,740/- and remaining cash of Rs. 57,92,540/- explained as it was out of books and considering the submission of assessee, the Id. CIT(A) set aside the order of Assessing Officer and directed for verification and to allow relief. The assessee furnished the breakup of cash in different branches found. Cash of Rs. 21,44,960/- was found at Surat which is

as per cash hook submitted during the assessment as well as to the Id. CIT(A), copy of which is filed as per paper book page No. 220 to 225. Cash at Lahripura Branch, Baroda of Rs. 36,47,580/- out of which the assessee explained that Rs. 9,83,480/- as per cash book and remaining Rs. 26,64,100/- belongs to various constituents, details of which were submitted as per page No. 233 to 235 of the paper book and separate paper book for copy of receipts issued to 87 different constituents and their ID proof etc. At Varachha, Surat branch, cash of Rs. 15,67,170 was found which was accepted by assessee and not disputed by Assessing Officer in their grounds of appeal before Tribunal. For cash of Rs. 3,47,570/- found at Alkapuri, Baroda branch was also accepted by assessee and not disputed by Assessing Officer in the grounds of appeal raised before the Tribunal. Thus, dispute is of only cash found at Surat and Lahripura, Baroda branch which is directed to be verified. The Id. AR of the assessee submits that a clear direction for verification of such cash book had been given to the Assessing Officer.

42. On the remaining ground which relates to ground No. 2 and 3 of revenue's appeal and ground No. 5 of assessee's appeal which relates to addition of cash of Rs. 17.29 crores and restricted by the Id. CIT(A) to the extent of Rs. 3,45,835/- by making addition of commission income @ Rs. 200/- per one lac. The Id. AR of the assessee submits

that the Assessing Officer made addition on the basis of notings as cash balance of various branches as per seized material found during the search as per details mentioned on page No. 1 to 6 of Annexure-A2. The breakup of all the cash balance in various offices of the firm were provided to the lower authorities. The Id. CIT(A) has recorded break up at page No. 11 of his order which is as under:

As per page No. 1	Cash Balance of Surat Office	Rs. 21,80,760/-
As per page No. 2	Cash Balance of Rajkot Office	Rs. 18,97,530/-
As per page No. 3	Cash Balance of Bhavnagar Office	Rs.2,08,25,500/-
As per Page No. 4	Cash balance of Bombay	Rs.2,01,89,580/-
	Cash balance of Delhi	Rs. 39,15,820/-
	Cash balance of Baroda	Rs. 4,96,16,070/-
	Cash balance of Ahmedabad	Rs. 7,42,09,150/-
		Rs. 14,79,30,620/-
As per page No. 6	Cash balance of Valsad	Rs. 17,500/-
	Cash balance of Navsari	Rs. 65,000/-
	Total	Rs. 17,29,16,910/-

The Id. AR of the assessee submits that in the statement recorded in post search enquiry on 26-27<sup>th</sup> December, 2020, Babubhai N. Patel, partner of firm had stated that he will reconcile cash balance and will furnish reconciliation statement. His reconciliation statement is recorded by the Id. CIT(A) at page No. 14 to 21 of his order. No cash was found from the searched premises which itself suggests that the assessee firm was merely handling for transferring cash from one branch to another branch. The Id. CIT(A) appreciated the submission of assessee and estimated commission @ Rs. 200/- per one lac and confirmed the addition to the extent of Rs. 3,45,843/-. To support

such submissions, the Id. AR of the assessee relied upon same case laws which were relied in earlier years.

43. We have considered the rival submissions of both the parties and have perused the orders of the lower authorities carefully. As noted above, ground No. 1 in revenue's appeal and ground No. 2 to 4 of assessee's appeal relates to cash found during the search action. The Assessing Officer made addition of Rs. 77,07,280/- by taking a view that the assessee failed to furnish the complete details regarding source of cash seized during the search and treated the same as unexplained/unrecorded in the books of account under Section 68 of the Act. We find that before the Id. CIT(A), the assessee explained that they have already offered Rs. 19,14,740/- which consists of Rs. 15,67,170/- plus (+) Rs. 3,47,570/- in the income by crediting the said amount by P&L account and shown in the return of income. Thus, we affirm the order of Id CIT(A) to that extent.

44. The assessee offered explanation in the following manner:

Point No.	Cash Found & Seized at	Amount (Rs)	Explanation
I	Surat HO	21,44,960	Cash of Rs. 21,44,960 is part of the cash balance as per day to day cash book maintained by appellant firm
II	Lehripura 9baroda) Branch	36,47,580	(a) Rs. 9,83,480/- was out of the cash balance as per cash book and (b) Rs. 26,64,100 belonging to various constituents received during ordinary course of business
III	Varachha branch	15,67,170	Already offered amount of Rs. 19,14,740/- (Rs. 15,67,170 + Rs. 3,47,570/-) as income by crediting

	Alkapuri Branch		the said amount to profit and loss account and ultimately offered for taxation in ROI for AY 2020-21.
	Total	77,07,280	

We find that the Id. CIT(A) after appreciating the contentions of assessee and perusal of cash book held that cash found from the Varachha Branch, Surat and Alkapuri Branch (Baroda) was offered to tax as undisclosed income, hence such addition was deleted.

45. So far as the cash found at Lahripura (Baroda) and Surat Branch, the Assessing Officer was directed to verify the cash and grant suitable relief. The Id AR for the assessee submits that a clear direction may be given to the assessing officer to verify the fact and allow relief in a time frame manner. As mentioned in para-10 of this order, that Hon'ble Gujarat High Court in a similar case of 'Angadia' in CIT Vs Patel Natverlal Chinubhai & Co. (supra) held that when in support of cash seized during search, assessee brought on record its cash book which duly showed that said amount belonged to its particular branch office, amount so seized could not be added to assesses taxable income taking it to be unexplained money. Therefore, the assessing officer is directed to verify the facts and pass the order by following the order High Court in CIT Vs Patel Natverlal Chinubhai & Co. (supra) and shall pass the order within six moth of receipt of this order. In the result ground No. 1 in revenues appeal is

dismissed and ground No. 2 to 4 is assessee's appeal are allowed for statistical purpose.

46. Now advertent to the ground No. 3 in revenue's appeal and ground No. 5 of assessee's appeal which relates to restricting the addition of Rs. 17.29 crores to Rs. 3,45,835/-. We find that the Assessing Officer made addition as per noting on page No. 1 to 6 of Annexure-A2. The Assessing Officer made aggregate of all the notings and made huge addition. We find that before the Assessing officer, the assessee specifically submitted that cash was received as a part of their regular course of Angadias business and was delivered at the destination as per direction of their client and as such the said cash as recorded in the loose sheets does not belong to assessee. The assessee again before the Id. CIT(A) repeated the similar submission and also referred the statement of partner of assessee firm. In reply to question No. 10, Babubhai Patel specifically contended that the noting on page No. 1, 5 and 6 contains the details of customer bookings and on page No. 2,3, and 4 contains the exchange of cash in between different branches. The assessee submitted that they have received commission. The Id. CIT(A) after considering the noting on the seized material, statement of partner of assessee and the assessment order recorded that the assessee is in the business of Angadias is not in dispute. During the course of their business at

various branches, the assessee received cash from clients for transferring to another branch as per direction of their client. The evidence found during the course of search which is basis for making addition is also shown that the amounts are received from various parties for transferring them to other branches of the assessee. This fact is evident from the statement of Babubhai Patel. This cash was not found in the searched premises, such fact shows that cash in question is dealt by assessee by merely handling or transferring from one branch to another branch and does not belong to assessee. The cash is handled to their regular course of Angadiya business and cannot be taxed as income of assessee. The Id. CIT(A) held that at the most can be taxed is the commission earned by assessee on such transaction. The Id. CIT(A) estimated the commission of Rs. 200/- per lac and worked out the commission income of Rs. 3,45,834/- thereby granted substantial relief to the assessee.

47. Before us, the Id. AR of the assessee vehemently submitted that the commission estimated on handling of such cash is on the higher side, the assessee has already offered commission income in their return of income on the basis of income earned during their regular course of business. We find that this ground of appeal in assesseees as well as in revenues appeal is similar to the grounds of appeal No. 2 to 8 of revenues appeal in AY 2019-20 and assesseees Ground No. 2 of

appeal, wherein we have accepted the plea of the assessee that assessee has offered commission income @ Rs. 100/- per lacs, which is reasonable, therefore, following the principles of consistency, the grounds of appeal raised by the revenue is dismissed and the ground of appeal raised by the assessee is allowed.

48. In the result, all the appeal of the revenue is dismissed and the appeal of the assessee is partly allowed.

Order pronounced on 30/05/2023, in open Court.

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

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

Surat, Dated: 30/05/2023

*\*Ranjan*

Copy to:

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

By Order

Sr. Private Secretary, ITAT Surat