

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 20/SRT/2020 (AY: 2008-09)

(Physical Hearing)

I.T.O., Ward-2(2)(3), Surat.	Vs.	Maheshchandra G. Patel (HUF), 22, Vrajbhumi, Tirumala Society, in front of Balaji Nagar, Piplod, Surat. PAN No. AAJHM 2315 P
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri P M Jaggasheth, C.A.
Department represented by	Shri Ashok B. Koli, CIT-DR
Date of hearing	26/07/2023
Date of pronouncement	27/09/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1, Surat (in short, the Id. CIT(A)) dated 26/11/2019 for the Assessment Year (AY) 2008-09. The Revenue has raised following grounds of appeal:

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO of Rs. 7,63,29,140/- on account of undisclosed Long Term capital Gain without appreciating the fact that the AO has brought on records various material evidences and analysed to prove that assessee has received on money.

(ii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the seized documents should have been considered as valid and the contents therein should be considered as true as per the provision of Section 292C of the Act, as the documents were seized from the possession of the co-owner of the land, written in the handwriting of deceased brother, duly accepted by the co-owner and the contents of the documents were logically and rightly analysed by the AO.

(iii) On the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition on the basis of decision in the case of purchasers by the Hon'ble ITAT whereas this case being different on the issue of undisclosed LTCG and the analysis of seized documents which substantiate the involvement of on money received as also provisions of Section 292C of the Act mandates and supports such conclusion.

(iv) On the facts and circumstances of the case and in law, the Id. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Id. CIT(A)-1, Surat may be set aside and that of the Assessing Officer's may be restored.

(v) On the facts and circumstances of the case and in law, the appellant craves its right to add, alter, amend, deleted, any of the ground of grounds of appeal."

2. Brief facts of the case are that a search action was carried out under Section 132 of the Income Tax Act, 1961 (in short, the Act) on 05/03/2013 in case of Diamond Group of Surat. In the said search operation, one the sub-group Shri Pitamber Bhagwandas Ruchandani was also covered. The assessee is one of the partner in land transaction carried out by Shri Pitamber Bhagwandas Ruchandani. The Assessing Officer was also having information that the assessee sold immovable property out of Revenue Survey No. 104, Revised survey No. 85/02 of village-Magdalla, Surat for a consideration of Rs. 39,60,000/- on 27/02/2008 alongwith other persons (Pitamber Bhagwandas Ruchandani). On the basis of such observation, the case of assessee was reopened the case of assessee under Section 147 of the Act on 20/03/2015 by the I.T.O. Ward 1(3)(4), Surat. Approval of reopening was granted by Additional C.I.T., Range-1(3), Surat on 20/03/2015 (wrongly recorded by A.O. as 20/03/2012). Notice under Section 148 dated 20/03/2015 was served upon the assessee. Thereafter, case was

transferred from I.T.O., Ward 1(3)(4) on 01/07/2015 to the I.T.O., Ward-2(2)(3), Surat. In the addition to above, the Assessing Officer was also having information that in the search action at Pitamber Bhagwandas Ruchandani, evidence relating to sale of immovable property of Rs. 15.66 crores were found. The assessee was having 50% of share in the property, thus the assessee has received Rs. 7.63 crores. The Assessing Officer recorded that before issuing notice under Section 148, the Assessing Officer was issued notice to assessee on 06/02/2015 about the sale of land at Magdalla, Surat. In response to such notice, the assessee filed reply dated 24/02/2015. In reply, the assessee submitted that he is agriculturists and having agricultural income which is exempt under the provisions of Income Tax Act. He has not filed return of income for previous year. With regard to sale of immovable property, the assessee referred transaction and admitted to have received Rs. 19,80,000/-. The Assessing Officer on the basis of evidence, found from residence of Shri Pitamber Bhagwandas Ruchandani about the sale of immovable property of Rs. 15,66,18,279/-, and the assessee was having 50% share in the said land, the sale consideration of which was shown at Rs. 39,60,000/-, therefore, the Assessing Officer worked out on money of Rs. 15,26,58,279/- (Rs. 15,66,18,279 – 39,60,000). The assessee is having 50% share, thus, the share of assessee of on money was worked out at Rs. 7,63,29,140/-.

3. On the basis of aforesaid observation, the Assessing Officer during the reassessment proceedings, recorded that during the search proceedings, certain incriminating material was seized vide Annexure A-1 and page No. 117 to 119 thereof, the actual rate of land was Rs. 15,777 per square yard, of land admeasuring 9927 square yard, $(15,777 \times 9927)$ on the basis of which the figure of on money of Rs. 15.26 crores, was worked out. On the basis of such view, the Assessing Officer issued detailed show cause notice dated 03/02/2016, the contents of show cause notice is recorded on page No. 5 to 7 of assessment order. In the show cause notice, the assessing Officer asked as to why Rs. 7.63 cores should not be added as capital gain to the income of assessee for A.Y. 2008-09. The assessee vide application dated 08/02/2016 requested to provide the copy of Annexure-A1, as mentioned in show cause notice. The assessee also mentioned that such seized paper was not recovered from his premises neither he has any knowledge of such transaction. The assessee also asked for copy of statement of Pitamberbhai Ruchandani and Radhakishan Ruchandani, recorded during the course of search and requested for their cross examination. The Assessing Officer noted that required annexure was provided to the assessee alongwith his notice dated 01/01/2016. On the request of statement of Shri Pitamberbhai Ruchandani and Shri Radhakishan Ruchandani and their cross examination, the Assessing Officer recorded that a summon under

Section 131 of the Act was issued to Pitamberbhai Ruchandani, who did not attend the proceeding. The karta of assessee Shri Maheshbhai G Patel attended on 17/02/2016 and he was asked to produce Shri Pitamber Ruchandani for cross examination. The Karta of assessee stated that he is not his partner but only client being agriculturist. His name was used for purchase of land. He produced purchase deed in individual capacity and submitted that HUF has nothing to do with purchase of land. The Assessing Officer further recorded that Shri Pitamber Ruchandani not attended the proceedings till passing of the Act the order.

4. The Assessing Officer on the basis of information available with him and document seized from Pitamber Ruchandani, proceeded for assessment. The Assessing Officer recorded that in the search action at the residence of Pitamber Ruchandani, loose paper was found and seized as Annexure-A1. On perusal of page No. 117 to 119 of loose paper, it contains the details of land at Survey No. 104, Magdalla, Surat, copy of noting thereon was scanned by Assessing Officer in assessment order which is defined by Assessing Officer that land admeasuring 9927 square yard was sold @ Rs 15,777/- per square yard, total figured arrived at Rs. 15,66,18,279/-, thereafter .5% was subtracted on account of brokerage and the figure of Rs. 15,58,35,188/- was arrived and 1/4th of which was mentioned as Rs. 3,89,58,796/- etc, etc. The Assessing Officer noted

that the registered sale deed reflect the rate at Rs. 399/- per square yard and total sale consideration as per sale deed was Rs. 39,60,000/-. Thus, on the basis of noting, recorded on seized paper, the Assessing Officer was of the view that the assessee and Pitamber Ruchandani received on money in addition to consideration recorded on sale deed i.e. Rs. 15.26 crores. On the basis of consideration reflected on the registered sale deed as well as entries on the seized material recovered from Shri Pitamber Ruchandani, the Assessing Officer made addition of long term capital gain of Rs. 7.63 crore in the income of assessee in the assessment order dated 01/03/2016 passed under Section 143(3) r.w.s. 147 of the Act.

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed its submission dated 20/07/2018. Submission of assessee is recorded in para 6 of order of Id. CIT(A). The assessee in his submission submitted that the case of assessee was reopened on the basis of information received from ACIT, Central Circle-3 with respect to sale of immovable property at Survey No. 104 and 105 admeasuring 9927 square yard of village-Magdalla, Surat vide registered document dated 27/02/2009 for Rs. 39,60,000/- with co-owner Pitamberbhai Ruchandani. Further during the course of search proceedings at the premises of Pitamberbhai Ruchandani, certain loose papers were found showing the details

regarding this land deal and involvement of on money of Rs. 15.27 crores. The assessee is of 50% owner, hence 50% of the said amount i.e. Rs. 7.63 crores should have been earned by the assessee. On the basis of such information, the Assessing Officer reopened the case of assessee. The assessee submitted that in response to show cause notice issued by the Assessing Officer on 03/02/2016, the assessee submitted that no on money payment in this deal was received and requested for copy of statement of Shri Pitamberbhai Ruchandani and Radhakishan Ruchandani based on which, addition was proposed. Though, copy of their statement was provided, but the Assessing Officer failed to provide opportunity for cross examination of the said party who did not present on the given dates.

6. Besides challenging the validity of reopening, the assessee also filed detailed written submissions against the addition on merit. Against the addition of long term capital gain, the assessee submitted that his case was reopened on the basis of information from third party, the information found from third party was merely rough jotting on some papers in the diary, there was no details like name and address of the persons, date of payments was not mentioned. The assessee verified such fact from his source that Pitamberbhai Ruchandani, whose premises, such receipt of on money, on sale of land was found, not accepted any on money. The assessee sold the land as per Jantri rate

determined by the revenue authority. The Jantri rate was determined at Rs.298/- per square meter. The value of land as per Jantri value was arrived at Rs. 38,95,700/- which is less than the value declared in the registered sale deed at Rs. 39,60,000/- From such facts, it was clear that loose papers found from the premises of Pitamberbhai Ruchandani was rough calculation or estimation and not the real value of sale of land, merely some details are matching with actual sale deed does not prove the transaction of on money. It was not in the handwriting by seller and purchaser. The assessee also submitted that he sold the plot bearing survey No. 85/2 of agricultural land admeasuring 0-83-00 square meter and there is reference of surrounding survey No. 86/2, 85/1 and 84 of village- Gavier in the sale deed. The revenue survey No. 85/2 is revised survey number of revenue survey No. 104 Paiki and the loose papers simply mentioned survey No. 104 and reference of Survey No. 85/2 which could be something different. In respect of loose paper No. 117 and 119 referred by Assessing Officer about .5% of brokerage, the assessee explained that said pages is not in the handwriting of assessee, it is not found from the premises of assessee, the assumption is based on guess work, cannot be a basis for addition. A close look of seized paper shows that share of assessee at 25% but there are allegedly two sellers and nine purchasers. Neither purchasers nor seller can have a share of 25% and hence such papers are dumb documents having

inscription of some other details, not applicable to assessee. The assessee furnished copy of sale deed. The assessee while explaining the seized paper submitted that survey No. 105 and 105 are adjoining but as per the seized material, the rate of survey No. 104 is estimated at Rs. 15777/- whereas the rate of 105 is estimated at Rs. 22450/- which itself an evident that it was just rough calculation or estimated figure jotted down by some person and not relevant for actual dealing of land. Such document was not found from the premises of assessee not in his handwriting, does not bear the signature and the assessee is not aware about such dealing. No money trail or any such book of funds have been seized which has the name of assessee on it. Even if, sale document is ignored, for a moment, not a single paper can lead to the assessee being an officiating signatory of the document. The assessee also explained the other fact which are not relevant for the issue under consideration.

7. The assessee further submitted that no effort is made by the department to find out in whose handwriting, these papers were written. No investigation was carried out about the brokerage paid and to find out the persons Arjun Bhai and Kallubhai. No effort was made by Assessing Officer to verify huge difference mentioned in the seized material with regard to adjoining lands being survey No. 104 and 105. The assessee in his other without prejudice submission, submitted that he is an agriculturist, made investment of Rs. 11,68,000/- for purchase of

agricultural land in survey No. 104 and sold his share and received Rs. 19,80,000/- in return. The amount of addition added by Assessing Officer was never earned by assessee. The purchaser of land is not agriculturists. In the alleged seized material, there is no distribution of money nor trail of money has been shown which may prove that the assessee received anything over and above Rs. 19,80,000/-.

8. The assessee also filed copy of order of Tribunal dated 25/10/2019 in case of all nine buyers, in respect of said land, wherein on the basis of similar seized material, the addition of on money was made by assessing officer, however, on appeal before the Id. CIT(A), the said addition was deleted and on further appeal, the order of Id. CIT(A) was upheld by the Tribunal. On the basis of such submission, the assessee submitted that there is no evidence to prove that the assessee received any on money. The Assessing Officer failed to produce a single evidence of on money in the hands of assessee during the assessment proceedings about the deal of property at survey No. 104, Magdalla, Surat. The assessee again vide submission dated 25/11/2019 repeated the similar submission and also filed copy of decision of Tribunal in case of purchasers of the sale land.
9. The Id. CIT(A) after considering the contents of assessment order, submission of assessee and order of Tribunal in case of purchases, noted that the Assessing Officer made addition of Rs. 7.63 crores in the hands of assessee being co-owner of agricultural land of Revenue survey no.

104. The Assessing Officer also held that another co-owner Shri Pitamberbhai Ruchandani sold agricultural land admeasuring 9927 square yard @ Rs. 15777/- per square yard. The Assessing Officer made addition by relying upon the noting appearing on page No. 117 and 119 of Annexure-A1 found during the search action on Shri Pitamberbhai Ruchandani. The Assessing Officer assumed such figure on the basis of writing on page No. 117 and 119. Such page number do not contain either name or code words to the denote purchasers and no dates are mentioned. There is no other evidence to corroborate such noting. The assessee has denied to receive any additional amount on sale of such property. Neither the Assessing Officer nor the authorised officer tried to make any effort to establish in whose hand, such noting were made when Shri Pitamberbhai Ruchandani denied the writing in his hand. The land was purchased by nine persons. The Assessing Officer on said nine purchasers, by estimating similar addition on account of undisclosed investment, made similar addition in their assessment orders. The Id. CIT(A) on further appeal in case of purchasers, deleted the addition. The Id. CIT(A) extracted the relevant part of order of Id. CIT(A) in case of all such purchaser. The Id. CIT(A) after referring the relevant part of jurisdictional CIT(A) in cases of purchasers, held that there is nothing in the handwriting in the assessee or the buyers. No date is mentioned nor

any data about the name is mentioned. It does not bear the signature of either of the parties and treated such document as a dumb document.

10. The Id. CIT(A) after referring the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs Maulik Kumar K. Shah (2008) 307 ITR 137 (Guj), Jayantilal Patel Vs ACIT & Ors (1998) 233 ITR 588 (Raj), N K Malhan Vs DCIT (2004) 91 TTJ 938 (Delhi) and various other decisions, deleted the entire addition. The Id. CIT(A) further held that the decision of Id. CIT(A) in case of purchasers was also upheld by the Jurisdictional Tribunal in ITA No. 386, 387, 388, 396/Ahd/2017 and ITA No. 2220, 2221, 2222 & 2394/Ahd/2016 dated 25/10/2019 and extracted the relevant part of order of Tribunal. And on the basis of such reference, the Id. CIT(A) in para 7.8 of his order held that the addition of Rs. 7.63 crores in hands of assessee is not supported by evidence or cogent reasoning. The addition is solely based on dumb document and price adopted is unrealistic and improbable and devoid of merits and granted full relief to the assessee. Aggrieved by the order of Id. CIT(A), the revenue has filed present appeal before the Tribunal.

11. We have heard the submissions of learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee. We have also gone through the orders of the lower authorities carefully. 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 action on Shri Pitamberbhai Ruchandani, sufficient incriminating material was found and seized. The assessee and Pitamberbhai Ruchandani were co-owner of the land in Survey No. 104, Magdalla, Surat admeasuring 9927 square yard. On the seized material, there was clear writing about area of land and rate. Further there was certain other writing which clearly suggests that the land in question was sold at the rate of Rs. 15,777/- per square yard. However, as per registered sale deed, the assessee and co-owner has shown sale consideration of Rs. 39,60,000/-. The Assessing Officer on the basis of such seized material worked out the figure of on money. The writing on the seized paper has clear indication about the property sold by the assessee and his co-owner Shri Pitamberbhai Ruchandani at higher price. There is presumption under Section 292C about the documents seized during the search from the control and ownership of co-owner that said document belonged to assessee and his co-owner. During the search action, Pitamberbhai Ruchandani stated that writing on the seized material may be in the handwriting of his brother Arjundan Ruchandani, who was no more. During the assessment proceedings, statement of Pitamberbhai Ruchandani and copy of seized material was provided to the assessee. The Id. CIT-DR for the revenue submits that the Assessing Officer made addition on the basis of concrete evidence found during the course of search action at the premises of co-owner.

The Id. CIT(A) deleted the addition by accepting the submission of assessee. The Id. CIT(A) also relied upon the decision of Tribunal in case of purchasers. The Id. CIT(A) deleted the addition on wrong footing by ignoring the facts and circumstances of the case. The seized material may not be relevant or admissible against the purchaser, however, the seized material was a direct evidence about the sale of land by co-owners. The Assessing Officer explained each and every entry on the seized material. On the top of the paper, number is mentioned 104 which is revenue survey No. 104. The registered sale deed clearly shows the same land. Page number also carried out the figure of 9927 which is the area of land mentioned in the registered sale deed. Thus, the area at survey number exactly matched. The page also carries the figure of 15777 which is the rate of land. The page also contained total figure of sale consideration as 15,66,58,279/-. Such entries are vital evidence found during the course of search, cannot be treated as dumb document. The Id. CIT-DR for the revenue prayed for reversing the order of Id. CIT(A) or to restore the order passed by the Assessing Officer. To support his submission, the Id. CIT-DR for the revenue relied upon the following decisions:

- (1) Chuharmal Vs CIT, M.P. (1988) 172 ITR 250 (SC)
- (2) Bhanuvijaysingh M. Vadhela (DECD.) (through LRs) Vs ITO (2013) 353 ITR 146 (Guj)
- (3) H.M. Constructions Vs ACIT (2021) 431 ITR 196 (Kar)

(4) DCIT Vs Shivram Consultants India (P) Ltd. (2023) 147 taxmann.com 457 (Delhi Trib)

12. 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 assessee should have been assessed under Section 153C and not under Section 147 of the Act. The Id. AR of the assessee submits that he is raising such legal plea by taking help of Rule 27 of Income Tax (Appellate Rules), 1963. The Id. AR of the assessee submits that where the Assessing Officer on the basis of search alleged conducted at the premises of co-owner of assessee, since no proceedings were initiated under Section 153C of the Act if any seized material disclosing earning of additional income, nor recorded satisfaction with regard to escapement of income, the initiation of reassessment proceedings under Section 147 is not legally sustainable. To support such view, the Id. AR of the assessee relied upon the decision of Hon'ble Karnataka High Court in Sri Dinakara Suvarna Vs DCIT (2022) 143 taxmann.com 362 (Kar) and also relied on following case laws:

- (1) DCIT Vs Sri Dinakara Suvarna (2023) 151 taxmann.com 489 (SC)
- (2) Narendra Kumar Vs ITO ITA No. 1218/Del/2019 (ITAT New Delhi)
- (3) ITO Vs Aurn Kumar Kapoor (2011) 16 taxmann.com 373 (Asr. Trib)
- (4) G. Koteswar Rao, Hyd Vs DCIT, ITA No. 400/Vizag/2014 (Visakhapatnam Trib)
- (5) DCIT Vs M/s S.R. Credits Pvt. Ltd. ITA No. 5216/Del/2015 (Delhi Trib)

(6) Shankarlal c. Shah Vs ACIT ITA No. 1359 & 1481/Ahd/2016
(Srt Trib).

13. In alternative submission, the Id. AR of the assessee submits that the notice under Section 148 of the Act were issued by the Assessing Officer who had no jurisdiction to assessee. Thus, the assessment proceedings initiated on the basis of wrong assumption of such jurisdiction, is bad in law. Such assumption or jurisdiction is not a mere irregularity but a defect which cannot be cured. Proposal or reopening and notice under Section 148 was issued by ITO, Ward 1(3)(4), who has no jurisdiction over the assessee. In the entire assessment order, there is no reference of valid transfer order under Section 129 of the Act about transfer of such case of jurisdiction. Therefore, the assessment order passed in the present case is also bad in law and any subsequent action is *void ab initio*. To support such submission, the Id. AR of the assessee relied upon the decision of Hon'ble Jurisdictional High Court in Shirishbhai Hargovandas Sanjanwala Vs ACIT (2017) 88 taxmann.com 578 (Guj).

14. On merit of the case, while supporting the order of Id. CIT(A), the Id. AR of the assessee submits that the alleged seized document was neither recovered from the possession or premises of the assessee. The seized document is merely a dumb document it does not contain the reference of seller or purchaser nor their name, address, date of alleged calculation or payment. No bifurcation of said figure is mentioned. There is no corroborative evidence that the assessee received any on money or

additional amount in addition to the sale consideration shown on the sale deed executed by the assessee alongwith co-owner. The said noting on the seized material has no evidentiary value in absence of any corroborative evidence. The assessee during the assessment made a request to call the person, in whose possession, such seized material was recovered. The Assessing Officer failed to call him for his cross examination. No proper or coercive step was taken for producing him for cross examination. Even on perusal of alleged seized material and the statement of such person who clearly denied that such writing is in his handwriting. The Assessing Officer failed to bring any corroborative evidence. To support his submission on various contention against the addition on the basis of seized material, the Id. AR of the assessee has relied upon the decision in case of Common Cause (A Registered Society) Vs Union of India (2017) 77 taxmann.com 245 (SC), ITO Vs Chintan Jadavbhai Patel (2018) 91 taxmann.com 302 (Guj), CIT Vs Maulikumar K Shah (2008) 307 ITR 137 (Guj), Jayanti Lal Patel Vs ACIT (1998) 99 Taxman 417 (Raj).

15. The Id. AR of the assessee further submits that on the basis of same seized material, the different Assessing Officers of different purchasers by relying upon same seized material, made addition on account unexplained investment. However, on filing appeal by all the purchasers, similar addition was deleted and on further appeal by revenue before the

Tribunal, the order of Id. CIT(A) was upheld. Copy of decision of all such co-owners are placed on record. The Id. AR of the assessee submits that in case of Co-owners, the different CIT(A) clearly held that the alleged seized document is nothing but a dumb document. Such finding of Id. CIT(A) were categorically upheld by the Tribunal in decision dated 25/10/2019 passed in various Income tax appeals (supra). By following the decision of various co-owners in similar case, in case of ITO Vs Govindbhai Savjibhai Patel, similar addition was deleted by Id CIT(A), which was again upheld by Tribunal in ITA No.378/Srt/2019 dated 18.06.2021. The Id. AR of the assessee finally submits that the case of assessee is fully covered by the decision of Tribunal in case of purchaser. Thus, on merit, the revenue has no case.

16. We have considered the rival submissions of both the parties and have perused the orders of the lower authorities carefully. We have also deliberated on various case laws relied upon by both the parties. We find that the Assessing Officer made addition of Rs. 7.63 crores on the basis of seized material found during the course of search action at the premises of Pitamberbhai Ruchandani by taking a view that during the search action, certain writing on the diary seized vide Annexure-A1 wherein on page No. 117 and 119 there were certain writing which contained Revenue survey number, area of land and the rate of land sold was written. The assessee was one of the co-owner of the land

with Shri Pitamberbhai Ruchandani. As per seized material the land was sold on sale consideration of Rs.15,66,18,279/-. The assessee was owner of 50% of the share. As per registered sale deed the land was sold at Rs. 39,60,000/-. Thus, after reducing the value shown on the sale deed the share of assessee comes to Rs.6,63,29,140/-. The Assessing Officer worked out the figure of Rs. 7.63 crores and made addition of long term capital gain. Before the Id. CIT(A), the assessee filed a very detailed and exhaustive written submission taking all factual and legal objection. The assessee also brought it to the notice of Id. CIT(A) that in case of purchasers, similar additions were made by different Assessing Officers. However, on further appeal, the different Id. CIT(A)s of having different jurisdiction in Surat, deleted all the additions and on further appeal by the Revenue, such order was upheld. The Id. CIT(A) on considering such submission of assessee noted that the Assessing Officer made addition of Rs. 7.63 crores in the hands of assessee being co-owner of agricultural land of Revenue survey no. 104. The Assessing Officer also held that another co-owner Shri Pitamberbhai Ruchandani sold agricultural land admeasuring 9927 square yard @ Rs. 15777 per square yard. The Assessing Officer made addition by relying upon the noting appearing on page No. 117 and 119 of Annexure-A1 found during the search action on Shri Pitamberbhai Ruchandani. The Assessing Officer assumed such figure on the basis of writing on page

No. 117 and 119. Such page number do not contain either name or code words to denote purchasers and no dates are mentioned. There is no other evidence to corroborate such noting. The Id CIT(A) also held that the assessee has denied to receive any additional amount on sale of such property. It was also held that neither the Assessing Officer nor the authorised officer tried to make any effort to establish in whose hand, such noting was made when Shri Pitamberbhai Ruchandani denied the writing in his hand. The land was purchased by nine persons. The Assessing Officer on said nine purchasers, by estimating similar addition on account of undisclosed investment. The Id. CIT(A) on further appeal in case of purchasers, deleted the addition. The Id. CIT(A) extracted the relevant part of order of Id. CIT(A) in case of purchaser.

17. We find that the Id. CIT(A) after referring the relevant part of jurisdictional CIT(A) held that there is nothing in the handwriting in the assessee or the buyers. No date is mentioned nor any data about the name. It does not bear the signature of either of the parties and treated such document as a dumb document. The Id. CIT(A) after referring various decisions of Hon'ble Jurisdictional High Courts and other Hon'ble High Court as well as Tribunal's decisions, deleted the entire addition. The Id. CIT(A) also held that the decision of Id. CIT(A) in case of purchasers was also upheld by the Jurisdictional Tribunal. The Id. CIT(A)

referred the decision of Tribunal in ITA No. 386, 387, 388, 396/Ahd/2017 and ITA No. 2220, 2221, 2222 & 2394/Ahd/2016 dated 25/10/2019 and extracted the relevant part of order of Tribunal and on the basis of such reference, the Id. CIT(A) in para 7.8 of his order held that the addition of Rs. 7.63 crores in hands of assessee is not supported by evidence or cogent reasoning. The addition is solely based on dumb document and price adopted is unrealistic and improbable and devoid of merits and granted full relief to the assessee. On careful consideration of the facts of the present case, as well as in case of the purchasers, we find that there is no independent or corroborative evidence in possessing of the assessing officer form making such huge addition. The assessing officer made additions merely on the basis of figure mentioned on the loose papers, without connecting it either to the persons, whose possession it was found. Moreover, the cases of all the co-owners were reopened on the basis of such seized material, wherein all the additions were deleted by the respective jurisdictional CIT(A). thus, in view of the aforesaid factual and legal position, we do not find any infirmity or illegality in the order passed by the Id CIT(A) in granting relief to the assessee. No contrary facts of law is brought to our notice to take other view. Hence, we affirm the order of Id CIT(A) on merit.

18. Considering the fact, that we have affirmed the order of Id CIT(A) on merit, therefore, adjudication on various legal contentions of the Id AR for the assessee on the validity of the order on reopening in absence of valid satisfaction under section 153C or on the issuance of notice by the assessing officer, other than jurisdictional officer, have become academic. In the result, the grounds of appeal raised by the revenue are dismissed.

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

Order announced in open court on 27th September, 2023.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 27/09/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat