

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 22/Rjt/2021

(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Bhavnaben Bhovanbhai Rangani 701, Ratrani Tower, Nr. Bhaktidham Temple, Panchvati Main Road, Rajkot-05
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABUPR5242C		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 23/Rjt/2021

(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Shri Bhupendra Trikamji Panchani 11-A, “Akashdeep”, Sai Nagar Society, B/h. Ramdham Kalawad Road, Rajkot-360007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABJPP7612B		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 24/Rjt/2021

(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner	बनाम/ Vs.	Smt. Dimpleben
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of Income-tax Central Circle-1, Rajkot	Vs.	Smitkumar Kaneria 7-A/1, Sneh-Priy, University Road, Nandi Park, Opp. IOCL Quarters, Rajkot-360005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ALGPK6005N		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 28/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Panchshilaben Jawaharbai Mori 102, Meghmalhar Apartment, Panchwati Main Road, B/h. Panchwati Hall, Rajkot- 360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AETPM9133K		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 29/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Bhavnaben Bhupendra Panchani 11-A, "Akashdeep", Sai Nagar Society, B/h. Ramdham Kalawad Road, Rajkot-360007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACGPP7104G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 35/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Shri Smitkumar Purushottambhai Kaneria 7-A/1, University Road, Sneh Priya, Nandi Park, Opp. IOCL Quarters, Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACYPK4021F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 36/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Sonal Maulesh Ukani “Pushkar 15B, Panchwati Society, B/h. Virani School, Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADPU7614F		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 37/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Shri Bhovan P. Rangani 701, Ratrani Tower, Nr. Bhaktidham Temple, Panchvati Main Road, Rajkot-360005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABKPR3243B		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 41/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Joliben Mahendrakumar Fadadu 201, Umesh Commercial Complex, Second Floor, Nr. Chaudhari High School, Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AELPP3164P		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 42/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Sh. Kishorkumar Virji Virangama 21, Aditi Apartment, Royal Park, Kalawad Road, Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAWPV4482D		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 44 & 46/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Shri Maulesh Dayabhai Ukani 15B, "Pushkar", Panchwati Society, B/h. Virani School, Kalawad Road, Rajkot-360001
Shri Maulesh Dayabhai Ukani	&	The Assistant Commissioner of Income-

15B, "Pushkar", Panchwati Society, B/h. Virani School, Kalawad Road, Rajkot-360001		tax Circle-1(1), Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFPU5748N		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 66/Rjt/2021
(निर्धारण वर्ष / Assessment Year : 2012-13)

Assistant Commissioner of Income-tax Central Circle-1, Rajkot	बनाम/ Vs.	Smt. Urmilaben Kishorbhai Viramgama 21, Aditi Apartment, Royal Park, Kalawad Road, Rajkot-360001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AARPV9907A		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by :	Shri Ashish Kumar Pandey, Sr. DR
Assesseeby :	Shri D. M. Rindani, A.R.

सुनवाई की तारीख/Date of Hearing	05/10/2023
घोषणा की तारीख/Date of Pronouncement	16/11/2023

ORDER

PER BENCH:

The instant bunch of 13 appeals filed at the behest of the Revenue except 1 by assessee in ITA No.46/Rjt/2021 are directed against the orders all dated 29.01.2021 (except ITA No.66/Rjt/2021 dated 08.02.2021) passed by the Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad (in short 'CIT(A)') arising out of the orders all dated 10.12.2019 (except in ITA

No.35/Rjt/2021 dated 30.12.2019 & in ITA No.35/Rjt/2021 dated 20.12.2019) passed by the DCIT/ACIT,CIR 1(1), Rajkot under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961, (hereinafter referred to as 'the Act') in all the appeals (except 144 r.w.s. 147 of the Act in ITA No.35/Rjt/2021)for Assessment Year 2012-13.

2. The brief facts leading to this case it this that a survey was carried out at the premises of M/s. Raghuvir Group by the Investigation Wing, Vadodara on 27.12.2018. During the course of survey proceeding, certain documents were found and impounded from the said office premises at Ahmedabad out of with Annexure A1 Page 1 to 139 relates to land deal. The land in question was lying and situated at Village Yashwantpur,Taluka Lodhika in the District of Rajkot; the agreement for sale in respect of the above land measuring about 18 acre 17 guntha was part of the said Annexure A1, Page 55 to 60 therein. From the said agreement of sale, fact reveals that the consideration amount was agreed upon by and between the parties being the vendors and the purchasers were about Rs.38 Crores. Subsequently, the said agreement was failed to be acted upon due to the lapse of the stipulated period for execution of the same and the wife/friend/relative of different assesseees itself become the purchasers of the said land. The purchase was made by execution of Deed of Conveyance, those were registered by way of separate deed commencing from 29.02.2012 to 30.10.2012. Relevant to mention that purchase was made ultimately for a consideration of Rs.2,41,01,716/-. The Revenue was of the opinion that the assessee under stated the value of the land to a large extent as the unexplained investment made towards on-money was never disclosed by the assesseees in their return filed under Section 139(1) of the Act. There was escapement of income within the meaning of Section 147 of the Act and

assessment, therefore, was reopened by issuing notice under Section 148 of the Act in the Month of March, 2019 upon obtaining approval of the competent authority. Different assesseees, thereafter, filed their return of income in response to the notice issued under Section 148 of the Act on different dates. Notice under Section 143(2) of the Act was issued to different assesseees and the reasons recorded for reopening was duly served upon the assesseees against which assesseees raised objection against the said initiation of proceeding separately, which were subsequently disposed of by and under orders issued on different dates and communicated to the different assesseees.

3. Before the authorities below, different assesseees challenged the reopening of assessment on very many counts out of which primarily on three different facts on which cases were reopened. The assesseees whose names were appearing in the Memorandum of Understating but not figuring in the Deed of Conveyance, challenged the order of addition made on protective basis. Challenges were made by the assesseees whose names were appearing as the buyers in the registered Deed of Conveyance but not appearing in the Memorandum of Understanding which was claimed to be the basis of addition; neither those assesseees were the Directors of Companies.

4. Some other assesseees whose names were neither appearing in the Memorandum of Understanding nor in the registered Deed of Conveyance subjected to the addition either substantive basis or protective basis. Challenges were made against such additions by these assesseees.

5. In regard to Shri Mualesh D. Ukani and Shri Bhupendra T. Panchani, whose status as have been mentioned as seller instead of purchaser of land

challenged the reopening under Section 147 of the Act on the premises of factually incorrect recording of reason.

6. Similarly in case of ITA No.24/Rjt/2021 Smt. Dimpleben Smitkumar Kaneria who was neither the party to the Memorandum of Understanding or Sale Deed nor Director in Kalptaru challenged the re-assessment proceeding. In ITA No.35/Rjt/2021; Smitkumar P. Kaneria, the husband of Smt. Dimpleben Smitkumar Kaneria, was neither a party to the Memorandum of Understanding nor of the Sale Deed. He who was also not a director on the date of Memorandum of Understanding challenged the re-assessment proceeding.

7. In ITA Nos. 37/Rjt/2021 (Shri Bhovan P. Rangani), 23/Rjt/2021 (Shri Bhupendra T. Panchani) & 42/Rjt/2021 (Shri Kishorbhai V. Viramgama) challenged the re-assessment proceedings as there was no unrecorded investment in land particularly when the cheques amounts were not in their books of accounts.

8. Re-assessment proceeding was also challenged by Smt. Urmilaben K. Viramgama as appearing in ITA No.66/Rjt/2021 before the authorities below inter alia on the ground of no reason of failure fully and truly in disclosing of material facts by her while reopening the assessment beyond the period of 4 years under Section 148 of the Act was mentioned. Relevant to mention that none of the documents were found and impounded from the possession of the any of the assesseees mentioned hereinabove.

9. These matters relate to the disputed purchase of the land in question to this effect that on 30.01.2009 one Mr. Maulesh D. Ukani, MM Sureja (Patel) & Amit Chauhan were appointed as Directors of one Kalptaru Leisure Pvt. Ltd. with an intention to construct a club under the aegis of M/s. Club Privilege Pvt. Ltd. Finally an agreement to sale i.e. Memorandum of Understanding for purchase of the land in question was entered into by different parties on 05.05.2011 as alleged. Six male directors were appointed followed by 3 more male directors on 20.06.2011 and 25.01.2012, respectively. Two Deeds of Conveyance were registered, executed between separate sellers and 13 purchasers on 29.02.2012. The 3rd, 4th & 5th Deeds of Conveyance were duly registered in the same manner on 13.04.2012, 08.08.2012 and 30.10.2012 respectively. On 16.10.2014, a search was conducted on Mr. Jawahar Mori. Subsequently on 27.12.2018, a survey was conducted on Raghuvir Group, Vadodara.

10. During the course of survey proceedings, statement of one Shri Jawahar Mori was taken by DDIT (Inv.-1) who was asked to explain the nature of this deal and nexus between the names of the person appearing in the Memorandum of Understanding and Sale Deed.

ITA No.22/Rjt/2021 (Revenue's appeal in case of Smt. Bhavnaben B. Rangani)

11. The assessment was reopened by issuing notice under Section 148 of the Act dated 29.03.2019, upon recording of following reasons by the Ld. ITO:

“ 1. *Brief Details of the Assessee:*

Assessee is an Individual. The assessee has filed return of income for AY 2012-13 As per ITD, her communication address isat 701, Ratrani Tower, Nr.Bhaktidham Temple, Panchvati Main Road, Rajkot.

2. *Brief details of information collected/received by the AO:*

In this case, information was received from the DDIT(Inv.)-1, Vadodara vide letter No.DDIT (Inv)-I/Dissemination Raghuvir/Farm issue/2018-19, dated 16-03-2019. From the perusal of details, it is ascertained that there was a survey in the case of M/s. RaghuvirBuildconPvt. Ltd. During the course of survey various incriminating documents have been found which pertains to sale of farmhouse at Village Yashvantpur, TalukaLodhika, Dist. Rajkot for a consideration of Rs.38 crores by Raghuvir Group to Rajkot based businessmen. The assessee BhavnabenBhovanbhaiRangani, is one of the persons (purchaser) who involved in said transactions. The agreement of sale was signed by Mahendrabhai K Faldu, Mansukhbhai M Sureja (Patel) and AmitChauhan. As per the agreement the buyers are stated as - ShriMahendrabhai K Faldu, ShriMauleshbhai D Ukani, ShriAmit A Chauhan, Shri M.M Patel, Shri PraveenbhaiPipaliya and the directors of Rajkot based M/s Kalptaru Leisure Pvt Ltd. The farm house is purchased to construct a club under aegis of M/s Club Privilege Pvt Ltd. The actual sale deeds are executed by the wives/relatives/friends of the directors of the M/s Club Privilege Pvt Ltd. The assessee is wife of director, ShriBhovanParshottamRanganiof M/s Club Privilege Pvt Ltd., who is the actual purchaser in the ratio of their holding in the said farm land and her share of holding is 9.09% and share of investment for the FY 2011-12 is Rs.2.45,25,729/-

3. *Analysis of information collected/received:*

On analysis of data received by this office, it is found that the assessee is having 9.09% share in the farm house purchased. The assessee has made payment Rs.2,45,25,729/- in F.Y. 2011-12 relevant to AY 2012-13. The of is to be brought to tax in the year of payment. On verification of e-filing portal, is found that the assessee has filed return of income for A.Y.2012-13 showing income of Rs.NIL/-. The assessee has not fully disclosed all the material facts in the return of income. Therefore, the source of assessee's investment in question remained unexplained.

4. *Enquiries made by the AO as sequel to information collected/received:*

The detailed inquiry has been made by the DDIT(Inv.)-1. Vadodara and accordingly supplied the data to this office.As per the information, it is gathered that the assessee is one of the purchasers of the farm house located at village Yashwantpur, Tal. Lodhika. Assessee has paid an amount of Rs.2,45,25,729/- for purchase of the property, which is assessee's unaccounted income which is required to be brought to tax net.

5. *Findings of the AO:*

As discussed in para 4 above,it is found thatthe assessee has paid an amount of Rs.2.45,25,729/- for purchase of farm house near Tal. Lodhika. Though

the assessee has filed return of income showing Nil income as stated above, the amount of cash transactions involved is very high. Therefore, the payment of Rs.2,45,25,729/- made by assessee is assessee's unaccounted income which needs to be brought to tax net.

6. *Basis of forming reason to believe and details of escapement of income:*

In view of the above facts, it is very clear that the assessee has made payment of Rs 2,45,25,720 for purchase of farm house at village Yashwantpur Tal Lodhika, during the FY 2011-12 which is assessee's unaccounted income. Though the assessee has filed return of income u/s 139 of the Act for the year under consideration, the source of such huge cash payment remained unexplained, which is required to be brought to tax. Thus the income to the extent of Rs 2,45,25,720 has escaped assessment in this case for which the case of the assessee for AY 2012-13 needs to be re-opened within the meaning of section 147 of the IT. Act. I have therefore reason to believe that income to the extent of Rs.2.45,25,729/- has escaped assessment. It is, therefore, requested that necessary approval may kindly be accorded for issuing notice u/s. 148 of the LT, Act in this case.

7. *Seventh paragraph will include escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India:*

Not Applicable.

8. *Applicability of provisions of section 147/151 to the facts of the case:*

In this case return of income was filed for the year under consideration so also Scrutiny assessment u/s 143(3) of the Act was made, where in the income returned by the assessee was accepted. The case of the assessee was assessed keeping in view the reason of selection and details were called for accordingly. Since 4 years from the end of the relevant assessment year has expired in this case, the requirements to initiate proceedings u/s. 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on part of the assessee to disclose fully and truly all material facts necessary for her assessment for the year under consideration. It is pertinent to mention here that reason to believe that income has escaped assessment for the year under consideration have been recorded above (para-6). I have carefully considered the assessment records containing the submission made by the assessee in response to various notices issued during the assessment/ reassessment proceedings and have noted that the assessee has not fully and truly disclosed all material facts necessary for her assessment for the year under consideration

It is evident from the above facts that the assessee had not fully and truly disclosed all material facts for her assessment for the year under consideration and thereby necessitating reopening u/s 147 of the Act.

It is pertinent to mention here that in this case, various notice u/s 142(1) was issued to the assessee requiring her to furnish all details as called for, which were material and necessary for assessment of her income. However, the assessee failed to disclose fully and truly all material facts for her assessment as narrated above. The assessee was well aware of her business dealings and particularly cash

payments made for purchase of the above referred plots of land and she ought to have furnished full details of the said transactions. However, she furnished only the copies of sale/purchase deeds, but cash payment details and the source of such cash payments were not disclosed. Thus, material facts as noted above could not with due diligence be discovered by the AO; accordingly attracting provisions of Explanation of section 147 of the Act.

It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of regular assessment/ reassessment. This fact is corroborated from the notices issued by the AO, material on record and various order sheet entries. It is important to highlight here that material facts relevant for the assessment of the issue(s) under consideration were not filed during the course of assessment proceedings and the same may be embedded in the submissions in such a manner that it would require due diligence by the AO to extract these information. For aforesaid reasons, it is not a case of change of opinion by the AO.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s.148 is required to be obtained from Principal Commissioner of Income Tax, Rajkot-1. Rajkot as per the Provisions of section 151 of the Act.”

12. The assessee replied as follows:

“With reference to the above your honour has provided the reasons for reopening of assessment for AY 2012-13, Ongoing through the reason recorded, it is found that your notice is technically and factually erroneous and bad in law. Under instructions from our above named client we are submit herewith the following few lines for your honour's kind and sympathetically consideration;

Our above named client is assessed to Income tax since long and regularly filed the Return of Income without any default. Our above named client's main source of income is share profit from firm, Income from House Property and interest income from Bank. Our above named client is surprised to receive the notice u/s 148 of the IT Act. In response to the notice u/s 148 of the IT Act our above named client has filed the return of income. Our above named client has neither made any unlawful investment in land nor earned the capital gain on sale of land. So the return of income is filed without made any addition in income.

Your honour has mentioned in the reason recorded that, "in this case the Information is received from DDIT(Inv)-1, Vadodara vide report No. DDIT(Inv.)/Dissemination Raghavir/Farm Issue/2018-19 dtd. 16.03.2019. As per the information a survey action u/s 133A of the Act was conducted on 27.12.2018 at the premises of Ms. Roghuvir Buildcon Pvt. Ltd. located at Vadodara & Ahmedabad. Similarly, as per the brief note (an issue of on money payment in the purchase of Farm House) forwarded therewith, a search action was also carried out on 16/10/2014 In the case of "Encore" group. The search operation code named "Encore" in which several entities and their related concerns based in Rajkot, who were engaged in the business of real estate i.e. sale/purchase of land, plotting of land and construction of flats/row house/ tenements/

shops etc were covered. As part of search operation a person named Sh. Jawahar Mari, who was providing design and architecture consultancy, was covered. A survey action was carried out at the business premise of Sh. Jawahar Mori. During the course of survey proceedings certain documents were impounded. Detailed analysis was made on the digital back up of computers impounded during survey proceedings which revealed that Sh. Jawahar Mori maintained records of transactions relating to purchase of land. The said transactions are recorded in files like Interest.xls, Farm.xls, mukesh.xls etc. The details of transactions in these .xls files are related to purchase of agriculture land, details of payments in cash as well as cheque and details of interest charged on late payment. The agriculture land is situated at survey no.6, Village Yashvantpur, Tal. Lodhika admeasuring 18 acres & 17 guntha. The land in question was purchased from persons who belong to Raghuvir Buildcon group. As per the report, the said agriculture land has been purchased for a total consideration of 38 crores. The details of seller (Raghuvir Buildcon Group) and sale deeds of land are as below:

Sr. No.	Sale Deed No.	Date	Seller	Sale Consideration as per registered deed	Area in Hectare	FY
1	Lodhika/0125/2013	16.01.2013	Jalamsinh Batuji Barad	40, 11, 485 / -	1-23-43	2012-13
2	Lodhika /3789 /2012	08.08.2012	Jalamsinh Baluji Barad	82, 20, 231 / -	2-52-93	2012-13
3	Lodhika / 0974/2012	29.02.2012	Anirudhsinh Jalamsingh Barad	38,47,030/-	1-18-37	2011-12
4	Lodhika/ 2055/2012	13.04.2012	Prashantsinh Jalamsinh Barad	40,11,485/-	1-23-43	2012-13
5	Lodhika/0973/2012	29.02.2012	Janakba Jalamsinh Barad	40,11,485/-	1-23-43	2011-12
Total				2,41,01,716/-		

The details of purchasers and their ratio of ownership of the land are as below:

Sr. No.	Name of Purchasers	% Share
1	Joliben Mahendrakumar Fadadu	9.10
2	Rasilaben Mansukhbhai Sureja	9.09
3	Sonal Maulesh Ukani	9.09
4	Panchshilaben Jawaharbai Mori	9.09
5	Dimpleben Smitkumar Kaneria	9.09
6	Ritaben Pravinbhai Pipaliya	9.09
7	Bhavana Bhupendrakumar Pachani	9.09
8	Bhavanaben Bhovanbhai Rangani	9.09

9	Urmilaben Kishorbhai Viramgama	9.09
10	Gita Gunvantray Bhadani	9.09
11	Rekhaben Shaileshbhai Vaishnani	3.03
12	Ripple Jamnadas Patel	3.03
13	Pushkar Harilal Dadhania	3.03
	Total	100.00

After due analysis of the impounded material it is concluded that the amount of sale proceeds as well as interest on late payment of above agriculture land are in the following manner:

Total sate consideration as per "Agreement of Sale Page 55 to 60 of the Annexure -1	38, 00, 00,000 1 -
Total Payment by cheque as per the 5 sale deed executed by the Raghuvir Group	2,41,01,7161-
Total Amount paid in Cash	35,58,98,2841-
Total Interest charged as per the file interest. xls	38,00,7661-

Year wise bifurcation of cash component as well as interest amount is as below:

	FY 2011 -12	FY 2012-1 3	Total
Cash component of sale consideration	26,86, 00, 000 /-	8,72,98,2841-	35,58,98,284 1-
Interest Charged as per file interest.xls	12,10,0001-	25,90,7661-	38, 00,766 /-
Total	26, 98,1 0,000 /-	8, 98, 89, 050 /-	35,96,99,050 1-

Since the assessee is having 9.09% of ownership in the above agriculture land the year wise proportionate payment of cash component of total consideration as well as interest amount is calculated as below:

Sr. No.	Particulars	% Share	FY 2011-1 2	FY 2012-13	Total
1	Cash component as well as interest amount	9.09	2,45,25,729/-	81,70,9151-	3,26,96,6 441-
	Total	9.09	2,45,25,729/-	81,70,9151-	3,26,96,6 441-

As per the detailed analysis of the report; verification of fund flow; scanned copy of certain images reflected therein, it is concluded that assessee has entered into a purchase transaction of agriculture land and has paid amount in cash as well as paid interest on late payment. The said cash payment as well as interest payment is neither reflected in registered sale deeds nor reflected in books of accounts. The details of such unexplained and undisclosed cash component as well as interest are as below:

Sr. NO.	Particulars	% Share	FY 201 1-12	FY 2012-13	Total
1	Cash component as well as interest amount	9.09	2,45,25,7291-	81,70,9151-	3,26,96,6441-
	Total	9.09	2,45,25,7291-	81,70,9151-	3,26,96,6441-

The analysis of the report; verification of fund flow; scanned copy of certain images reflected therein it is concluded that assessee has entered into a purchase transaction of agriculture land and has paid amount in cash as well as paid interest on late payment. After due analysis it is concluded that assessee has entered into a purchase transaction of agriculture land and has paid amount in :ash as well as paid interest on late payment. The said cash payment as well as interest payment is "either reflected in registered sale deeds nor reflected in books of accounts. As the assessee has 'lied her return in Form ITR-3 which does not reflects the cash component as well as interest amount paid on such purchase. The said cash payment as well as interest payment is neither reflected inregistered sale deeds nor reflected in books of accounts. In the circumstance, the quantum of such cash component as well as interest payment remains undisclosed ft unexplained. In view of the above discussion in above para, since the above cash payment in the guise of on money payment as well as interest on late payment in aggregate of Rs.2,45,25,7291I- made towards purchase of land is not reflected in books of accounts of assessee, the same has remained unexplained for F. Y. 2011-12 i.e. A. Y. 2012-13. Therefore, I have reason to believe that income of more than Rs. One Lakh has escaped assessment in this case, for which the case of the assessee for AY 2012-13 needs to be reopened within the meaning of section 147 of the Income Tax Act."

In this regards we have to state that whatever information passed by the DDIT(Inv)-I, Vadodara, it is totally wrong, unwarranted and bad in law because our above named client has not paid any cash component and not purchased the land at Rs.38,00,00,000/-. Our above named client has earned the income from share profit from firm and Interest income. And whatever income earned by our above named client, the same is shown in the return of income and investment made from her personal capital account and through proper banking channel. Your honour has done the guess work because your honour has not found any incriminating document regarding the purchase of land. Whatever agreement found by the DDIT (INV)-I Baroda i.e. Agreement of Sale Page No. 55 to 60 of the Annexure 1 which is not belongs to our above named client. First of all the unsigned Agreement found and our above named client's name was not shown anywhere in the agreement. How your honour could blamed that our above named client has made a cash payment for purchase of land. Your honour has reopening the assessment on surmises and conjecture basis.

During the course of Survey Proceedings, the Investigation Wing has found the MOU i.e. Agreement of Sale Page 55 to 60 of the Annexure -1 amounting to Rs.38,00,00,000/- which is not belongs to our above named client. It is true that our above named client has purchased the property from 1. Jalamsinh Baluji Barad, 2. Janakba Jalamsinh Barad, 3. Prashant Jalamsinh Barad 4. Aniruddhsinh Jalamsinh Barad. But the deal is not done for 38,00,00,000/-. Further the said land was purchased by our above named client in very low amount because the said Land is pertains into RUDA £t it is in a green zone, in the green zone, no any construction is allowed either residential or commercial or any other kind of construction. According to Rules & Regulations of RUDA, only 5% construction is to be allowed, can't use full FSI. Further according to Detailed Master Plan of RUDA, there is a high flood level on this land more than 58% land in high flood level due to very near from Bank of Nyari River. So it is not possible to use of land in either Commercial or Residential as mentioned above. Hence the seller has sold the property in very low price. Our above named client has paid the amount in proper banking channel and whatever amount paid by our above named client, the same is shown in her personal books of account and property is shown in the balance sheet. Copy of the Balance Sheet, Capital Account as well as Ledger Account of Land Purchase and copy of the Purchase deed is attached herewith for your kind perusal. Further our above named client had not paid any interest to the seller and our above named client has no concern with Jawahar Mori. Your honour has reopening the assessment on surmises and conjecture basis and doing the guess work without any incriminating documents. But sir, the facts remains facts, it cannot be change.

Further the copy of the MOU, RUDA Master Plan, Certificate of RUDA, Architect Certificate, etc is attached herewith for your kind perusal. So you are requested to kindly accept the contention and take on records and give the decision on merits and drop the proceedings u/s. 148 of the IT Act or accept the return in TOTO. There is no any inaccurate particular of Income is filed by our above named client and no any incriminating documents found by the Department. No any Cash transaction is made by our above named client hence your notice u/s.148 for reopening the assessment on the ground of Cash component is technically and factually erroneous and bad in law and against the rule of natural justice.

Without prejudice to above contentions, you are requested to kindly take the decision on merits and oblige.”

13. The reopening of assessment was culminated into an order of addition on account of unexplained cash payments towards purchase of land amounting to Rs.2,45,25,729/- under Section 69B of the Act. The Ld. AO was of the view that the assessee alongwith other co-owners purchased the property in question from family members of Shri Jalamsinh Baluji Barad whose actual value was of Rs.38 Crores. Though the agreement of sale was entered into by the members, the documents were registered in the name of their wives/relatives/friends. As the final deed executed for a consideration of Rs.2,41,01,716/-, there ought to have been on-money element as of the

opinion of the Ld. AO. Besides, buyers paid huge interest for cash payment and thus, the element of unexplained investment appeared to be the sole basis upon which the Ld. AO made the addition of Rs.2,45,25,729/- on substantive basis.

14. The Ld. CIT(A) while dealing with the matter observed as follows:

“10.1 I have considered the facts of the case and the submissions of the carefully. As mentioned earlier the Investigation Wing of Vadodara had carried out survey at the business premises of one Raghuvir Buildcon P Ltd. During the course of survey, one agreement to sale was found, which showed primary agreement entered into by the members of the Raghuvir Group to sale certain tracts of land situated at village Yashvanthpur. The agreement to sale states the sales consideration at Rs 38 crores, and this agreement to sale was executed on 5.5.2011. The agreement to sale show the purchasers as Mahendra K Faldu, Maulesh D Ukani, Amit A Chauhan, M M Patel, Praveen Pipaliya and the directors of Kalpataru Leisure P Ltd. The name of the appellant did not figure amongst the individual buyers. Even in respect of capacity of director of the company, the appellant was never the director of the said company. Her husband had become the director of the company on 25.1.2012 and this fact is clearly observed by the AO under para 4.2 of the assessment order. The impugned agreement to sale dated 5.5.2011 has been signed by two persons and that too only on the first and second pages. Neither the signature of the appellant nor her husband appears on the agreement to sale. Hence, it can be reasonably held that, the agreement to sale dated 5.5.2011 is not binding upon the appellant.

10.2 During the course of post survey proceedings, the Investigation Wing had recorded the statement of Shri Jawahar Mori, who is stated to be the arbitrator to the deal, as per the agreement to sale. Incidentally, his wife appears to have been one of the final co-owners, as per the final deed. He had stated as under:

Yes Sir, I have seen all the sale deeds and thoroughly. I find names of spouses/relatives /friends of the directors of Club Privilege P Ltd (erstwhile known as Kalpataru Leisure Pvt. Ltd). Even name of my wife Mrs. Panchshila Mori is also mentioned therein. I agree that the mentioned land suffered from several infirmities as mentioned by myself in reply to Q No 13 above. However, once the sellers were confronted with such issues, they understood the problems with the land, and were later ready to sell it at throwaway price to us. We also estimated that after few years, the regulations under Green Zone may be lifted by RUDA on the said land. Also, looking at the quantum of land that was under High Flood Zone, we agreed that rest 42% of land can be sold at reasonable price in future. Thus investing in this land could have been profitable in future. It is with this idea in mind, we subsequently made our wives/friends/relatives to purchase the land However, sir, I would like to mention that our estimates were wrong and the whole land has turned out to be a dead investment for us as of now.

10.3 From the above statement the AO had held that, there is soft admission on the part of Shri Mori that the deal did materialize, as per the agreement to sale. The admission of

Shri Mori is that, the impugned land was demarcated as High Flood zone and Green Zone by the Rajkot Urban Development Authority. Hence, restrictions are placed for the development of the same. Thus, no commercial activities can be carried out unless the restrictions are lifted. In view of these infirmities, the sellers agreed to scale down the price of the land, which was finally bought by the wives and relatives of the persons mentioned in the agreement to sale.

Shri Mori was the arbitrator to the deal, as per the agreement to sale. He contended that, subsequently, it transpired that the land in question, fell under land demarcated as High Flood Zone and Green Zone by the RUDA. This means that, more than half of the land cannot be developed by the appellant. The appellant has filed proof in this regard, as per which, at the time of assessment, the land in question was still held captive as green zone and high flood zone. Under the circumstance, the mystery is, whether the land would fetch a sum of Rs 38 crores?

However, here the fact that the name of appellant is not appearing in the agreement to sale, and neither she or her husband was the director of Kalpataru Leisure P Ltd at the time of execution of agreement to sale viz., 5.5.2011, assumes significance. There is also a remark inserted subsequently (handwritten) in the agreement to sale. As per this remark, since the buyers failed to honour the payment schedule, the agreement to sale stands cancelled.

10.4 Another piece of evidence is retrieved e-mail (attached excel sheets) from the premises of Shri Jawahar Mori. These documents were impounded during the course survey proceedings at the premises of Shri Mari, in connection with the search of ENCORE group of Rajkot. Needless to say, no adverse inference of these documents were drawn while finalizing the survey relevant assessment of Shri Mori. The following three documents excel sheets are important.

a. farm.xls

b. mukeshpatel.xls

c. interest.xls

Contents of farm.xls

10.4.1 This excel sheet contains four columns. Sr No., Date, Amount and Remarks. In this sheet, at four places there is mention of cheque received as per the remarks column. The AO thus inferred that, the remaining amounts are nothing but cash, thus implying that the cash has exchanged hands. This kind of implied meaning does not have any significant when no such noting of cash payment is found there. The very first row shows an amount of 5,00,000 with the remark JBB Cheque. However, according to the appellant this amount of cheque is appearing in the bank statement of either the sellers or the buyers. There are in all 53 entries, and if the finding of the AO is held sacrosanct, then more than 50% of the alleged cash entries took place before the husband of the appellant became the director of the company viz., Kalpataru Leisure P Ltd. It is also seen from the table reproduced in the assessment order that, more than half of the cash alleged to have exchanged hands before the appellant or her husband was made the director of the company mentioned in the agreement to sale.

Contents of interest.xls and mukeshpatel.xls

10.4.2 This excel sheet contains details of interest for the delayed payments. According to the AO, there is mention of interest charged, which is usually @ 2.40% per month. According to the appellant, who was not a party to the original agreement to sale, and without prejudice, if it is assumed that she took over the mantel from somebody else subsequently, still, the most important question is, why would she pay the interest for the delayed period, which is nowhere attributable to her?

10.4.3 Another important aspect of the case is that, these soft documents were found and impounded during the course of survey at the premises of Shri JawaharMori, somewhere in the year 2017 The same assessing officer had carried out the survey relevant assessment and no adverse inferences of these documents were drawn in the assessment order.

10.5 During the course of survey at the premises of Raghuvir Buildcon P Ltd., two valuation reports were found and impounded. These valuation reports were dated 19.7.2008 and 13.10.2006. Since the dates fell much before the agreement to sale viz., 5.5.2011, it is obvious that these land were got valued by the erstwhile sellers viz., the Barad Family. Both the valuation reports were certified by one same valuer viz., Shri Sunil Selarka of Selarka Associates. Both these reports are addressed to The Manager, Karnataka Bank. The valuation report dated 19.7.2008 shows the value of the land at Rs 11.17,00,180/- whereas, the valuation report dated 13.10 2006 shows valuation of the same land at Rs 6,76,70,000/-.

Further on verification of valuation reports, following facts emerged:

- (i) Both the valuation reports are prepared by Mr. D. K. Selarko of M/sSelarka Associates, who is Government registered valuer
- (ii) The valuation report dated 13.10.2006 appears to be of the instance of Union Bank, since it is addressed to the Manager, Union Bank of Indio, Ahmedabad. The purpose of valuation is mentioned is to ascertain its present fair and reasonable Market Value. The value of land as per the said valuation report is determined at Rs. 6,04,89,000/ in the valuation report itself by way Note, there is a mention that in case of distress sale value would be less than 20% to 30%. Thus, this valuation report in itself carries a veiled danger that the land in question is covered by irregularities.
- (iii) The valuation report dated 19.07.2008 appears to be at the instance of Karnataka Bank, Baroda since it is addressed to the Manager, Karnataka Bank, Baroda. The purpose of valuation is mentioned as to ascertain its present fair and reasonable Market Value. The value of land as per the said valuation report is determined of Rs. 10,53,97,500/. In the valuation report itself distress value is shown at 20% less. Thus, within a span of two years, the valuation of the land changed by more than 40%, which clearly shows that the value adopted by the AO in the assessment order is humungous

The land falls under Green Zone (GZ), where construction is not permissible and is under High Flood Zone (HFZ) area as it is near the catchment area of Aji dam. This fact is certified by qualified Architect, Tejas Fadadu and is supported by notifications of Rajkot Urban Development Corporation (RUDA) and under GZ it is only 5%.

Above crucial and decisive information are missing in both the valuation reports. Further, as the valuation reports were impounded third party, the appellant has no business to see the purpose and intention behind such valuations. However, what is important is to see and infer is that in spite of not referring to the limitation/restriction, the Valuer could determine the value of land under consideration for Bank is 27% of the value that has been mentioned in the Agreement to sale in FY 2008-09. It is highly improbable and unlikely that in a span of nearly two three years its value increases and that too up to 38 crores. Under the circumstances, the probability of making or preparing papers showing higher valuation for bank cannot be ruled out. Further there are all possibility of collision amongst the parties to the agreement to sale or others who were involved in the earlier stage to get secret profit from the deal. And for that ulterior motive such type of papers might have been prepared. However, as the appellant was not party to that deal such data is not binding to her and is not at all applicable to her particularly when no similar data was found from her possession during extensive search in her case.

Since these are addressed to the Bank, it is clear that the erstwhile owners had got this land valued for some loan purpose. Nowhere in the valuation report, there is mention of any encumbrance in the form of High Flood Zone or Green Zone. It is obvious when there is a stake for a loan, no person would highlight the encumbrances.

11. *As per the allegations of the AO, it is seen that the basis of addition is data that has been found / impounded from the third party only, where creator, is Raghuvir Buildcon Private Limited. Such data inflating the value might have been prepared or maintained and kept for their own purpose or benefit or probably to support higher valuation of property for banking purposes. Therefore, it may be binding to them but no one else can be made responsible to explain the same unless any independent evidence is found which shows that it relates to other person/party and is directly associated with it*

12. *As regards the data found/retrieved from the premises of Jawahar Mori, sent by Raghuvir Buildcon Private Limited, Shri Jawahar Mori had in his statement categorically stated that he has no idea / knowledge about those data vide reply to Question No. 12 of his statement recorded on 18.01.2019. It is pertinent to note that he in his statements recorded on 23 12 2017 and again on 18.01.2019 submitted that Raghuvir Buildcon Pvt. Ltd., has no office in Rajkot, therefore the authorized person namely "Altaf of that group used to come to his office and accessed his office computer system for their own business. Therefore, the data shown to him belongs to them only and he has no connection with those data. Thus, it was the data sent by Raghuvir Buildcon Group and not prepared or made by Jawahar Mori. Further, he has never stated or confirmed that either parties to the Agreement to sale or any other connected parties have made any unaccounted payment as such.*

13. *It is trite law that materials found during survey carried out is binding to the person in whose case survey is conducted. Any noting found related to third party is not binding to that third party unless any concrete and corroborative material is found. Therefore, if third parties' denial is disbelieved by the AO, then he ought to have brought necessary rebuttal evidence on record to disprove the contention of the appellant, by contrary materials. This was not done, and addition is made on incorrect appreciation of*

facts merely on presumptions and suspicion. There must be something more than suspicion to support. Mere suspicion cannot take the place of proof for assessment. The seized documents in question may create doubt to AO but such a doubt, if extensively clarified on the strength of evidence to be otherwise, should not have been substituted for proof.

14. *The alleged transactions mentioned in the loose paper of a third party were not handwritten by the appellant. The amount mentioned in the loose paper /excel sheet were not corroborated the materials seized during the search u/s 132(1) of the Act in appellant's own case. Therefore, the AO is not justified in resting his case on the impugned agreement to sale and excel sheets found from third party In this connection reliance is placed on the decision of Hon'ble Supreme Court in the case of CBI vs V.C, Shukla (1988) 8 SSC 410 and Chuharmal Vs. CIT (1988) 172 250 138 Taxman 190 (SC).*

15. *The image of the said agreement is reproduced by the AO in the assessment order. On verification of the same, following facts emerges.*

- (i) *There is no name of the appellant in the agreement of sale and there is no signature as well of the appellant.*
- (ii) *There is no name of the husband of the appellant, neither he is signatory to the agreement of sale.*
- (iii) *Photocopy of Agreement to sale is on Rs. 20 Non-Judicial stamp paper dated 27.04.2011. On page No. 5 date 05.05.2011 is mentioned. Further, one of the parties to the agreement is directors of Kalptaru Leisure Private Limited.*
- (iv) *However, the appellant was never the director of that company, neither her husband was director or shareholder in the company on given dates. As a matter of fact, appellant's husband is appointed as a director in the Club Privilege Private Limited (Earlier known as Kalptaru Leisure Private Limited) with effect from 25.01.2012, whereas the impugned agreement to sale is dated 05.05.2011. Therefore, the appellant and her husband were not aware about the content of the impugned Agreement to sale.*
- (v) *So far as signatures appearing in this photocopy of Agreement to sale is concerned, it can be seen that only first two pages bear signatures of three person out of six, who were the parties to the Agreement to sale itself and pages 3, 4, 5 and 6 are unsigned. are no signatures of witnesses or all the sellers. It is settled principle that mere unsigned draft agreement to sale has no evidentiary value in the eyes of the law.*

16. *From the above, it may be mentioned that the materials on which the AO heavily relied upon has no evidentiary value and therefore cannot be made the basis of addition. Loose sheets/ unsigned documents found from third party cannot be treated as records of the assessee. Even if it is assumed that the same is record for the purpose of those whose it belongs or from whose possession it was found, but it cannot without independent evidence fix a liability upon third party*

Hon'ble Supreme Court of India in the case of Common Cause (A Registered Society) v. Union of India 77 taxmann.com 245 (SC) has held that "There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable

and supported by other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries".

17. *In plethora of cases courts have held that even if the entries in loose papers etc. are admissible as evidence, then to support that inference about correctness of the entries therein, supportive independent evidence is required and such entries would not suffice without independent material. Such materials have no probative value in the absence of some corroborative primary evidence of the reality of such transaction shown in the noting in such loose sheets of paper. Therefore, any presumption of transaction on some vague, tenuous and dubious entries in a sheet of paper is not rational and legal unless there is corroboration by corresponding entry in accounts of both the parties to the transaction. Reliance is also placed on the following judicial pronouncements:*

(ii) *Hon'ble High Court of Gujarat in the case of PCIT-III, Ahmedabad vs.*

Vivek Prahladbhai Patel (2016) 66 taxmann.com 41 (Gujarat)

Unexplained investments u/s. 69-ITAT deleted the addition - Upon appreciation of the evidence on record and finds no reason to take a different view. In the opinion of this court, having regard to the evidence which has come on record, which reveals that there is an agreement to sell executed between the assessee and the sellers, which shows the price of the plots of land in question to be a much higher figure than the documented price and the fact that the sellers have stated that they have received higher amounts by way of on-money and have also shown receipt of such amount in their income tax returns, the circumstances do raise a suspicion, However, as held by the Supreme Court in Commissioner of Incometax v, Daulatram Rawatmull, (1964 (3) TMI 14-SC), even if circumstances raise a suspicion, suspicion cannot take the place of evidence.

(ii) *Hon'ble High Court of Gujarat in the case of Ushakant N Patel v CIT 282 ITR 553 (Guj) has held that:*

As per the binding ratio laid down by the Honorable jurisdictional High Court of Gujarat in the aforesaid judgment, firstly it was incumbent upon the A.O. to establish that said investment i.e. the alleged amount paid on account of impugned bana chithi was in fact paid by the appellant assessee himself and no other assessee or person. Hon'ble High Court held that it is established and proved beyond doubt that the appellant assessee has not made the said investment but was made by third party. Therefore, on this count only no additions u/s.69 could have been made in the financial years immediately preceding the assessment year/s in question.

(iii) *Hon'ble ITAT Hyderabad Bench 'A' in the case of Smt. K.V. Lakshmi Savitri Devi vs. ACIT [2013] 30 taxmann.com 117 (Hyderabad - Trib.) wherein it has been held that*

"that the seized document was just a handwritten loose document and the handwriting was also not of the assessee and the loose document was found at the premises of a third party. The burden was on the department to prove conclusively that the loose document belonged to the assessee. There was no presumption in law that the assessee had actually paid Rs. 165 lakhs towards purchase of the property. The undisclosed income was to be computed by the Assessing Officer on the basis of the available material on record. It should not be based on conjectures and surmises. No addition could be made on a dumb document and

noting on loose sheet. It should be supported by the evidence on record and the evidence on record was not sufficient to support the revenue's action. The circumstances surrounding the case were not strong enough to justify the addition made by the department. Accordingly, the addition was deleted."

(iv) *Hon'ble ITAT Mumbai Bench 'A' in the case of Anil Jaggi v. ACIT [2018] 89 taxmann.com 266 has held that:*

"Genesis of conclusion of Assessing Officer that assessee had paid money' for purchase of property under consideration was based on contents of pen drive which was seized from residence of an ex-employee of Hiranandani group Information as printout of pen drive fell short of certain material facts, viz., date and mode of receipt of 'on money', who had paid money, to whom money was paid, date of agreement and who had prepared details Ex-employee of Hiranandani in course of his cross-examination had clearly stated that neither he was aware of person who had made entry in pen drive, nor had with him any evidence that assessee had paid any cash towards purchase of flat - Whether mere admission of amounts recorded in pen drive as additional income by falling short of any such material which would inextricably evidence payment of 'on money' by assessee would not lead to drawing of adverse inference as regards unexplained investment made by assessee for purchase of property under consideration-Held, yes [Para 14] [In favour of assessee]

- (i) *CBI v. V.C. Shukla 1998 taxmann.com 2155 (SC)*
- (ii) *Mahasay Ganesh Prasad v. Narendra Nath AIR 1953 SC 431*
- (iii) *CIT v. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj.)*
- (iv) *Devilal Gherilal Shah v. Dy. CIT (1995) 52 TTI (Ahd.) 618*

18. Further, the appellant was never allowed cross examination of the seller of land or Shri Jawahar Mori, though requested during the assessment proceedings Therefore, addition made without allowing opportunity to cross examine any of the parties from whom the materials have been impounded and statements made is violative of principle of natural justice. The statements recorded from third party behind the back and without providing an opportunity of cross-examination of the appellant is having no evidentiary value. Therefore, no adverse inference could be taken by the AO against the appellant as held by the Hon'ble Supreme Court of India in the case of Andaman Timber Industries v. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006.

19. Further, it has been noticed that the AO failed to bring on record certain material facts before raising suspicion viz. date and mode of payment by the applicant, who paid the money and to whom it was paid, who had prepared the details. These facts are unanswered, AO proceeded to make the addition without any evidence of payment by appellant or her husband. The AO totally failed to put forward the inextricable evidence for payment in cash, therefore, drawing of adverse inferences as regards the investment made by the appellant for purchase of the property under consideration has no legs to stand.

20. It is also a fact that the market value of land under consideration is higher compared to the circle rates fixed by the Sub-registrar, this itself fortifies the fact that the investment made towards purchase of the property as per the books of account supported by registered sale deed is well in order.

21. Furthermore, it is also observed that AO had tried to correlate the impugned agreement to sale with the excel sheets recovered from the digital data impounded from the premises

of Shri Jawahar Mori. However, it is learnt that the then AO who has finalized the assessment of Shri Jawahar Mori earlier had accepted that transactions as per Excel Sheet not material transaction, and no addition was made though proposed by the ADIT.

Therefore, once the predecessor AO has accepted the transactions as irrelevant and no addition was made in the hands of the person from whom impugned excel sheets were found, no different interpretation could have been made for stretching the issue for making addition by developing new theory on suspicion. Thus, the opinion earlier formed by predecessor AO cannot be changed in absence of any materials on record, which conclusively proves otherwise.

22. *The e-mails named Mukesh Patel, Farm and interest were stated to be sent by Raghuvir Buildcon to Jawahar Mori, this conduct establishes that it was neither prepared nor created by Shri Jawahar Mori. As regards the allegation that the figures mentioned in Farm.xls. tallied with the Agreement to sale found from Raghuvir Buildcon Pvt. Ltd., it was submitted that creator / originator of all the data as stated by Jawahar Mori in his statement is none other than Raghuvir Buildcon Group. Why it has prepared and for what purpose it was created is not under the knowledge of the appellant. Merely on suspicion, it cannot be assumed that the appellant must have paid on money for purchase of land. Further records revealed that Shri Jawahar Mori denied having any knowledge about the transactions at the time of his assessment proceedings and had never accepted the transactions more particularly has never referred the name of the appellant in such impugned deal. When the person from whose possession it was found denied the content therein and confirmed that he had never made any payment, there is no question of making addition in the hands of the appellant. There is no corroborative material on record which conclusively prove that the appellant has made pavement in cash for purchase of land. Identical has been decided by the Hon'ble High Court of Gujarat in the case of PCIT Vs. Ajay Surendrabhai Patel in tax Appeal 523 &524 of 2015, wherein it has been held that*

"From the concurrent findings recorded by the Tribunal, it is evident that the appellants have not been able to establish the fact that any funds have actually been paid by Vivek Patel to the sellers. While the sellers have stated that they have received the funds by a representative of Vivek Patel, the name of such person has not been disclosed nor have the dates on which such funds have been received come on record. A perusal of the power of attorney on which strong reliance has been placed on behalf of the appellant to contend that it establishes a link between the assessee and Vivek Patel, shows that the same has been executed by one of the sellers in favour of Vivek Patel in relation to one of the plots purchased by the assessee, but, significantly, such power of attorney has been found to be from the possession of the seller and not from Vivek Patel. Therefore, there is no material on record that prior to the search, Vivek Patel acted upon such power of attorney so as to establish a link, howsoever tenuous, between the assessee and Vivek Patel. As noticed earlier, the assessee has denied having paid any more consideration than that reflected in the sale deed executed in his favour. Vivek Patel has denied having paid any consideration to the sellers pursuant to the agreement to sell. The revenue has failed to bring any reliable material to establish payment of consideration by Vivek Patel to the sellers or to establish any link between the assessee and Vivek Patel, who have both asserted that they did not know each other prior to the search. Under the circumstances, on the evidence which has come on record, the revenue has failed to establish that any higher consideration has been paid by the

respondent assessee in connection with the sale deeds executed in his favour by the sellers in respect of the plots of land in question.

The conclusion arrived at by the Tribunal is based upon findings of fact recorded by it upon appreciation of the evidence on record. The learned counsel for the appellant, despite strenuous efforts, is not in a position to point out any perversity in the findings recorded by the Tribunal. In the opinion of this court, having regard to the evidence which has come on record, which reveals that there is an agreement to sell executed between Vivek Patel and the sellers, which reflects the price of the plots of land in question to be a much higher figure than the documented price and the fact that the sellers have stated that they have received higher amounts by way of on-money and have also shown receipt of such amount in their income-tax returns, the circumstances do raise a suspicion, However, as held by the Supreme Court in Commissioner of Income-tax v Daulatram Rawatmull (1964 (3) TMI 14 SC), even if circumstances raise a Suspicion suspicion cannot take the place of evidence.

Thus, the AO totally failed to establish link or nexus between the loose papers and the appellants' making payment in cash over and above the registered sale deed. Therefore, no addition could have been made merely on suspicion, conjectures and surmises.

23. *Shri Jawahar Mori never accepted that land under consideration was purchased for Rs. 38 crore. On asking specific question about the amount of Rs.38.00 crore by the AO, he categorically stated that due to infirmities viz., restrictions being land falling under notified Green Zone and High flood zone, no full construction or required FSI was available on land. He also submitted that they could construct on only on 42% area of total land and being in Green Zone, they cannot immediately convert it into Non-Agricultural purpose. As regards AO's observation that Jawahar More is to Act as Arbitrator, it is submitted that thosesheets of paper Le. Agreement to sale was not signed by Shri Jawahar Mori And merely mentioning name does not fasten any liability unless it is accepted by the said person and counter signed it. In support of the fact that land under consideration falls under high flood zone / green zone, necessary proofs have also been submitted.*

24. *It has been found that the rate as per the reckoner of Sub Registrar, Rajkot in surrounding area is Rs. 3,00,000/- per acre as claimed by the appellant whereas the appellant has purchased the land under consideration for Rs. 13,00,000/-, which is apparent form the registered sale deed. This itself suggests that the appellant has not paid any excess consideration in purchase of land under consideration. Here, it is pertinent to rely on the decision of Hon'ble ITAT, Rajkot Bench, Rajkot in the case of DCIT,Circle-1, Rajkot vs. Hitesh M. Bagdai in IT(SS)A No.3,485/RJT/2013 with Cos, where the issue is to determine sale consideration of land at Mota Mova, Near Rajkot City (happens to be on the way to appellants location from Rajkot City). In that case DVO has valued around 3 acres of land at Mota Mova at Rs. 13.87 Lacs only Relevant finding is as under:*

6.3 *Even the value determined by the DVD suggest the fair market value at Rs.13.87 Lacs only. Thus we are of the view that the value as adopted by the AO for Rs.465 crores treating the sale consideration is not sustainable"*

25. *As regards the AO's observation that if cheque payments in the account are treated as genuine, then why cash deposit which appear in the same file in the same table should not be treated as genuine. In this connection it is noticed that the said notings were made by*

third party and not the appellant Further there is no name of the appellant against the receipt of Cash. All the parties, whose names are appearing in the impugned Agreement to sale have denied making any payment in cash. Further, it is also proved beyond doubt that the value mentioned in the Agreement to sale does not correspond to the Fair Market Value of land as such. Further, there is no independent materials on record that proves that the cash has been paid for the land under consideration. It is worth noting that the materials found or retrieved from Shri Jawahar Mori was also not prepared by him and neither was he aware about the content as it was sent by Raghuvir Buildcon Private Limited, for their personal use or purpose via Shri Jawahar Mori. Therefore, in absence of any independent evidence found from Shri Jawahar Mori, solitaire evidence found, belonged to Raghuvir Buildcon Pvt. Ltd., cannot be binding to third Parties. In this connection reliance is placed in the case of Nishant Construction Pvt. Ltd. vs. ACIT, Ahmedabad in ITA NO. 2732/Ahd/2016.

26. The AO alleged that the appellant should have filed complaint against false allegation / charge and non-filing of the complaint proves that cash has exchanged hands with mutual consent of both the parties. This allegation of the AO is strange and premature. There is no provision in the Act to file complaint in case where reopening of assessment is made based on the belief of escapement of income. In case one is aggrieved by such allegation or assessment order, there are set procedures and code for remedial measures in form of appeal, revisions or rectification. Further, there is no evidence or proof in form of statement or material which clearly demonstrate that any cash payment has been flown from appellant's end. Moreover, the issue / case /person becomes prosecutable only when he has brought some kind of harm/loss to the appellant. Here, since there is no such harm/loss to the appellant, where is the question of filing criminal offence? Thus, this observation of the AO that non filing of complaint proves cash exchanged is totally misplaced and infructuous.

27. On going through the facts noticed in the assessment order: following contradictions have also been

1. Noting/ entries in the excel sheet "farm.xls" is not matching with the payment scheduled mentioned in alleged agreement to sale.
2. No single evidence found suggesting actual payment either as per agreement to sale or as per entries in excel sheets. No cogent evidence such as cash receipts issued by the sellers have been found during the extensive search/survey carried out.
3. Amount of cheque entries mentioned in the excel sheet "farm.xls" is not fully matched with the actual cheques issued by the purchasers, Le as per sale deed In fact, very first entry in "farm.xls" of Rs 5,00,000/- with remarks "JBB Cheque" dated 09/05/2011 is not matching with the total cheques issued by purchasers as mentioned in registered sale deeds. Further total of other three entries with remarks "Cheque worked out at Rs.2,39,37,072/- is not tallying with the actual document price of land at Rs. 2,41,01,716/-

In excel sheet "interest.xls", working of interest is made in different tables, from which table no. 1 and table no. 3 are not correlated with other impounded documents. From this excel sheet, it appears that the author of this sheet worked out/ estimated interest on different

amount at different interest rate, i.e. 1.25% / 2.40% and for different time period for which no justifiable reasons are found.

28. *Under facts and circumstances of the present case, nowhere in the agreement to sale nor in any of the impounded materials, there is mention of the name of the appellant. In fact, none of the documents were found and impounded from the possession of any of the parties. However, nowhere in the seized cash book/data there is mention of any cash payments made for the impugned land at Yashvanthpur village.*

29. *In light of the above facts and circumstances of the case, it is held that, no addition of alleged cash payment for purchase of land at village Yashwanthpur can be made in the hands of the appellant because, the appellant was never a party to the deal as per the agreement to sale. The agreement to sale is dated 5.5.2011 whereas, the husband of the appellant had become the director of the company in January 2012. Nowhere in the impounded materials, there is mention of appellant having paid cash on money. Since the appellant entered in the deal subsequently, the interest payable for delayed payment is not attributable to her, since the original agreement to sale is not binding on her. The AO also erred in not referring the land to the DVO. Therefore, the addition made of Rs 2,45,25,729/- is directed to be deleted.*

30. *In the result, this grounds of appeal are also allowed.”*

15. We have heard the rival submissions made by the respective parties. We have also perused the materials available on record.

16. In this particular matter, the agreement for sale dated 05.05.2011 was considered to be the primary documents entered into by the members of Raghuvir Group to sell the land lying and situated at Yashvanthpur for the consideration of amount of Rs.38 Lakhs as mentioned therein. Admittedly, the name of the assessee did not figure amongst the individual buyers neither the assessee was the Director of the said company. It is a fact that the husband of the assessee became the Director of the company but subsequent to the alleged deed of agreement dated 05.05.2011. The husband of the assessee became the Director of the company only on 25.01.2012. Further admitted fact is this, that the document which has been considered as the primary document and the prime evidence is not bearing any signature of the assessee neither the signature of her husband. In that view of the matter, the assessee's

first submission is this that the same is not binding upon the assessee and the addition made is, therefore, not sustainable in the eye of law.

17. The other submission made by the assessee to this effect that as the impugned land falling within the high flood zone and green zone as demarcated by Rajkot Urban Development Authority imposing restrictions for development of the same, no commercial activities can be carried out unless those restrictions are lifted and only for that sole reason, the sellers agreed to scale down the price of the said land and finally bought by the wives/relatives/friends of the person mentioned in the agreement of sale, has been duly considered by us. A corroborative document in support of the same, geographically and/or location-wise demarcating of the land under the green zone was also annexed to the paper book filed by the assessee before us. Needless to mention that these documents were also filed before the authorities below; both before the Ld. AO and before the First Appellate Authority. The case of the assessee is, therefore, out of 41 Acres promised 17 Acres were received, out of 58% was in HFL, rest was in green zone and upto 30 meters of HFL no development was allowed. Further that, as construction was permitted only of 5% of the entire land, factually cannot support the determination of the value of the land at 38 Crores. The net resulting value of Rs.2.41Crore is, therefore, not unrealistic, plausible. Taking into consideration the documents submitted by the assessee the case as made out by the assessee as above cannot be brushed aside.

The other evidences impounded during the course of survey proceedings at the premises of Shri Jawahar Mori, in connection with the search of ENCORE group of Rajkot mainly farm.xls, mukeshpatel.xls and interest.xls, no adverse inference was drawn by the Ld. AO. So far as the

farm.xls is concerned even though there is no such noting of cash payment found, the Ld. AO informed that the remaining amounts were paid through cash. The cheque amount of Rs.5 Lakhs does not appear in the bank statement of either sellers or the buyers and as regards other 53 entries, the Ld. AO alleged that the cash entries took place before the assessee became the Director of the company, namely, Kalpataru Leisure P Ltd., though, it is the own finding of the Ld. AO that half of the cash alleged to have exchanged hands before the assessee's husband was made as Director of the company. So far as the interest components @ 2.40% per month is concerned, the person whose name not figured in the Memorandum of Understanding i.e. the agreement for sale, question of making payment for the alleged delayed period doesn't and cannot arise as contended by the assessee has found to have some substance.

18. We also find that two valuation reports certified by one valuer, namely, Shri Sunil Selarka of Selarka Associates dated 13.10.2006 and 19.07.2008 showing valuation of same land at Rs.6,04,89,000/- & 10,53,97,500/- which were prepared at the instance of Union Bank of India, Ahmedabad and Karnataka Bank, Baroda, for the purpose of obtaining loan. These documents were impounded from the third party. The valuer determined the value of the land at 27% than that of the value mentioned to the assessee in the agreement in the year 2008-09. The assessee joins issue here. According to the assessee, firstly considering these valuation reports and the purpose of preparation of the same, it is impracticable and unavailable that the valuation could rise to Rs.38 Crores. Secondly, as the assessee was not a party to the deal, ultimately the said valuation report, neither the Deed of Agreement is binding upon her

particularly when no such identical data was impounded from her during search.

19. During recording of statement on 18.01.2019, Shri Jawahar Mori stated that he has no office in Rajkot and the authorized person of the Raghuvir Buildcon Pvt. Ltd., namely, "Altaf" of that group used to come his office and accessed his office computer system for their own business. Further that, the data shown to him belongs to them only and he has no connection with those data. It was categorically stated by him that those data was not prepared by Shri Jawahar Mori neither he has confirmed making any unaccounted cash payment by any of the parties of agreement to sale or any other connected parties. The noting found related to the third party cannot be said to be binding upon her unless or until supported by corroborative documents. Therefore, the Ld. AO ought to have brought necessary rebuttal evidence while disbelieving the statement made by Shri Mori in order to disprove the contention of the assessee. The addition on incorrect appreciation of fact on presumptions and suspicion without supporting evidence is not sustainable only on the basis of the noting found during course of search on third party. The noting found in the loose paper was not written by the assessee. Needless to mention the loose paper and/or excel sheet were not corroborated with the materials seized during course of search under Section 132(1) of the Act in assessee's own case. On this particular aspect, reliance was placed in the case of CBI vs. V. C. Shukla (1988) 8 SCC 410. Fact reveals that the name of the assessee and her husband neither appeared in the Agreement for Sale nor their signatures reflecting in the said document. Neither the assessee nor her husband was the Directors or shareholders in the company at that material point of time when the alleged agreement to sale dated 05.05.2011 was

executed. Relevant to mention that assessee's husband was appointed as director in the Club Privilege Private Limited (earlier known as Kalptaru Leisure Private Limited) only w.e.f. 25.01.2012 i.e. much after the alleged execution of the agreement. Moreso, the disputed document namely the Agreement of Sale bears signatures of three persons out of six persons in the first two pages neither bearing signatures of witnesses nor all the sellers. Thus, such an incomplete document cannot have any evidentiary value in the eye of law which cannot be relied upon while making addition in the instant case. In order to rely upon the loose papers as the admissible evidence, supportive independent evidence is also required to rely upon for drawing inference about the correctness of the entries made in the said loose papers considered to be admissible as evidence. We find that the Ld. CIT(A) on this aspect relied upon the following judgments in support of above contention made by the assessee which found to be applicable:

- i. PCIT-III vs. Vivek Prahladbhai Patel [2016] 66 taxmann.com 41 (Gujarat)
- ii. Ushakant N Patel vs. CIT 282 ITR 53 (Guj)
- iii. Smt. K. V. Lakshmi Savitri Devi vs. CIT [2013] 30 taxmann.com 117 (Hyderabad – Trib.)
- iv. Anil Jaggi vs. ACIT [2018] 89 taxmann.com 266
- v. Andaman Timber Industries vs. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006.

20. It is also an admitted position that the assessee was never allowed to cross examine the seller of the land or Shri Jawahar Mori though request during the assessment proceeding was made. In that event, no adverse inference could have been taken by the Ld. AO against the assessee as held by

the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise in Civil Appeal No. 4228 of 2006 has also taken into consideration by the Ld. CIT(A) in its proper perspective.

21. As there is no iota of cogent evidence as to how much amount has been paid by the assessee or her husband in cash in the hands of the Revenue, the addition is formed to be on surmises and conjunctures, is of no worth. The same is, therefore, suffers from the vice of arbitrations. This is whimsical and erroneous and thus, liable to be set aside.

22. We find that the Ld. AO tried to correlate the impugned Agreement for Sale with the excel sheets recovered from the digital data impounded from the premises of Shri Jawahar Mori whereas the Ld. AO finalized the assessment of Shri Mori accepting that transaction as per excel sheet not material transaction and no addition was made though proposed by the ADIT. Thus, once the predecessor AO is accepted the transaction as irrelevant no addition in the hands of the third party being assessee on the same breath on a different interpretation is unwarranted. The same is, therefore, palpably erroneous and liable to be set aside. It is also a fact that Shri Jawahar Mori denied of having any knowledge about the transaction at the time of his assessment proceeding and never accepted the transaction. Moreover, never referred the name of the assessee in such impugned deal. When the main searched person is not confirming such payment, the addition in the hands of the assessee is not sustainable in the absence of any cogent evidence in the hands of the Ld. AO.

23. We do not find any supportive corroborative material on record in the hands of the Revenue so as to conclusively prove that the assessee made

payment in cash in purchase of land in question. We find that while dealing with this particular issue, the Ld. CIT(A) relied upon the judgment passed by the Hon'ble Jurisdictional High Court in the case of PCIT vs. Ajay Surendrabhai Patel in Tax Appeal Nos. 523 & 524 of 2015. In that particular matter, the price ultimately paid for the purchase of land was much higher than the consideration mentioned in the agreement for sale of the said plot of land. Moreso, sellers stated that they received higher amounts by way of on-money and also shown the receipt of such amount in their income tax return, which raise suspicion. The case here is completely reversed as rightly held by the Ld. CIT(A). However, relying upon the matter of ITO vs. Daulatram Rawatmull, reported in 1964 (3) TMI 14 (SC) where it has been held that even if circumstances raise a suspicion, suspicion cannot take the place of evidence. The Ld. CIT(A) followed the said judgments as the AO failed to establish the live link of nexus between the loose papers and the assessee's payments in cash over and above the registered sale deed.

24. On this particular issue, we again considered the statement made by Shri Jawahar Mori. Nowhere he stated that consideration was of Rs.38 Crores rather stated as the restriction has been imposed on the land falling under notified Green Zone and High Flood Zone, no full construction or required FSI was available on land. Conversion of the land into non-agricultural purpose is also not possible as stated by him requires consideration. Relevant to mention that the agreement for sale was not signed by Shri Jawahar Mori and mentioning his name cannot make him responsible unless it is accepted by that particular person. As per jantri value, the rate as per the reckoner of Sub-Registrar, Rajkot, the rate of surrounding area of particular land is Rs.3 Lakhs per acre and the land in question has been purchased for a consideration of

Rs.13 Lakhs per acre as per the registered sale deed which is sufficient enough to suggest that there could not be any reason for making further excess consideration in purchasing the said land. The Ld. AO was of the opinion that as the cheque payment in the account has been treated as genuine, then, cash deposit appears in the same file should earned same treatment. But the persons' name figured in the agreement in question never admitted of making payment in cash. Moreso, the agreement for sale doesn't correspond to the market value of the land as such. Time and again, we have said that no independent materials are in the possession of the Revenue so as to prove that cash payment made for the land in question. The material found from Shri Mori was neither prepared by him nor known to him as the same was sent by Raghuvir Buildcon Pvt. Ltd. for their personal use via Shri Mori; no counter statement to this effect has been forthcoming from any of the parties during search or post search.

25. Non-filing of the complaint against false allegation/charge in regard to cash exchanged hands with mutual consent of both the parties by the assessee as alleged by the Ld. AO is of no consequences in the absence of any provision under the Act of filing any complaint against the reopening of assessment based on belief of escapement of income. We find that this particular aspect of the matter has duly been taken care of by the Ld. CIT(A). Such an allegation made by the Ld. AO as said to be premature and not sustainable at all is found to be proper.

26. The contradictions found in AO's own order in regard to notice/entries in the excel sheet "farm.xls" not matching with the payment scheduled mentioned in the alleged agreement for sale, no evidence found suggesting

actual payment either as per agreement to sale or as per entries in excel sheets. Neither evidence proving cash receipts issued by sellers or that the amount of cheque entries mentioned in the excel sheet "farm.xls" not fully matched with the actual cheques issued by purchasers as per sale deed. The details whereof is available at Paragraph 27 of the order passed by the Ld. CIT(A) as drawn our attention mentioning the estimated interest of different amounts at different interest rate varying from 1.25% to 2.40% mentioned in the excel sheets also found no justification. The same cannot prove any case against the assessee in making interest payment due to elapse of time specified for execution of sale deed mentioned in the agreement for sale as alleged or at all.

27. We would like to mention that when the assessee was never a party to the deal as per the alleged agreement for sale dated 05.05.2011 neither there any mentioning of the assessee having paid cash on-money in any of the impounded materials, particularly, when the assessee entered into deal after the alleged agreement to sale, the question of interest payable for delayed payment by her doesn't and cannot arise as the very basis of alleged original agreement to sale dated 05.05.2011 is not binding on her. Relevant to mention that the husband of the assessee became the director of the company much after the agreement for sale, only in the month of January 2014. Apart from that the Ld. AO neither referred the matter to the Ld. AO for ascertaining the valuation of the land before making addition. We find that the entire aspect of the matter has already discussed by us hereinabove were duly taking into consideration in its proper perspective by the Ld. CIT(A) and deleted the addition made by the Ld. AO, which in our considered opinion is just and proper so as to warrant interference. With the above observation, the

Revenue's appeal is, therefore, found to be devoid of any merit and thus dismissed.

ITA No. 23/Rjt/2021 (Revenue's appeal in case of Shri Bhupendra Trikamji Panchani)

28. At the time of hearing of the appeal, Ld. Senior Counsel appearing for the assessee submitted before us that the satisfaction note prepared by the Revenue Authorities recording reasons believing the assessee as a seller of the said land situated at Jaswantpur escaped capital gain is factually incorrect. It was further argued that the name of the assessee neither appearing in the Memorandum of Understanding executed on 05.05.2011 nor in the Deed of Conveyance. He was neither a Director of the company at the time of execution of the said disputed Memorandum of Agreement dated 05.05.2011. Thus, the very basis of the recording of reasons is factually incorrect and on the score alone, the proceeding initiated by the Ld. AO under Section 147 of the Act is bad in law and thus, liable to be quashed.

29. The Ld. DR has also not been able to controvert such submission made by the Ld. AR.

30. Having regard to the facts of the case and the recording of reasons quoting the assessee as a seller and escaping assessment is found to be thus incorrect. Reopening of assessment on the basis of recording of reasons on admittedly 'incorrect facts' is, in our considered opinion, does not have legs to stand. The same is found to be not maintainable and void ab initio. Thus, the entire proceeding is quashed.

ITA No. 46/Rjt/2021 in case of Shri Maulesh Dayabhai Ukani (Assessee's appeal)

31. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

32. In ITA Nos.44 & 46/Rjt/2017, the assessee, namely, Maulesh D. Ukani was the de facto owner of the land as alleged, as the wife/friend/relative of the said assessee was the namesake owners. The assessee has hugely understated the value of the land and as unexplained investment paid towards on-money which was never disclosed by the said assessee in the return of income filed under Section 139(1) of the Act as the case made out for escapement of income under Section 148 of the Act by the Revenue. However, such finding of fact by the Revenue on the basis of the evidences impounded during search from the premises of Jawahar Mori who was engaged in the business of Real Estate as sale/purchase of land and on the basis of the statement recorded of said Jawahar Mori is having no live link with the said transaction. Such plea found to be based on suspicion. In the absence of any tangible material specific to a person in case of alleged escapement of income cannot said to be a foundation of belief; there should be specific allegation labelled against any particular person, supported by corroborative documents. However, in this case assessee's name is not appearing in the Memorandum of Agreement. While reopening the assessment of the assessee, the following reasons were recorded by the ACIT, Circle 1(1), Rajkot:

“The assessee is an Individual and deriving his income from Salary, House Property and Other Sources. The assessee has filed his return of income of Rs. 68,86,375/- for the year under consideration. The information has been received from DDIT (Inv.)-1, Vadodara that a survey u/s. 133A of the IT Act was conducted on 27.12.2018 at the

business premises of M/s. Raghuvir Buildcon Pvt. Ltd. at Vadodara and Ahmedabad. During the course of survey, various incriminating documents were found and impounded. It was found from the documents that the assessee alongwith various other persons have entered into agreement of sale of a Farm House at Village Yashwantpur, Tal. Lodhika, Distt. Rajkot for a consideration of Rs. 38,00,00,000/-.

2. *On verification of return of income filed, it was noticed that the assessee has not shown any capital gain during the year under consideration There is no mention in the Schedule regarding the transaction made in Sale of Farm House to Raghuvir Buildcon. The information was received from the Investigation Agencies. Further, in this case, no scrutiny assessment was carried in the past.*

3. *In view of the above, provision of Section 147 is applicable facts of this case and the assessment year under consideration is deemed to be a case where in income chargeable to tax has escaped assessment. Therefore, I have reason to believe that income exceeding Rs.1,00,000/- is escaped assessment within the meaning of section 147 of the IT Act. In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s.148 has been obtained separately from Principal Commissioner of Income Tax, Rajkot-1, Rajkot through online mode as per the Provisions of section 151 of the Act.”*

33. The assessee before us challenges the very validity of the proceeding initiated under Section 147 of the Act, particularly, on the basis of the factually incorrect recording of reasons. It is the case of the assessee that the satisfaction note to this effect that the assessee had not shown any capital gain during the year under consideration is palpably bad as the assessee was neither the buyer nor the seller of the disputed transfer of the Farm House to Raghuvir Buildcom. The Ld. DR has not been able to show a single document which could ascertain that this assessee's name is appearing in any disputed evidence unearthed during the course of search of Shri Jawahar Mori. Neither the Memorandum of Understanding nor the registered Deed of Conveyance speak about the identity of the said assessee. He was not found even as a Director before the alleged agreement for sale or after the alleged execution of the Memorandum of Understanding. In that view of the matter, as the very basis of reopening being made on incorrect fact recorded by the Ld. AO to this effect that the assessee is a seller and has escaped assessment of capital gain is found to be absolutely wrong. The very basis, if, found to be incorrect the

further proceeding cannot be said to be justified standing on wrong footing and thus, liable to quashed. In that view of the matter, we are inclined to accept the case made out by the assessee in holding the entire proceeding is bad as the same was originally based upon the wrong recording of fact by the ITO while reopening the assessment. Thus, proceeding is thus void ab initio and therefore quashed. The Assessee's appeal is allowed.

ITA No. 44/Rjt/2021 (Revenue's appeal in case of Shri Maulesh Dayabhai Ukani)

34. As we have already quashed the entire proceeding initiated by the ITO under Section 147 of the Act bad in law in ITA No.45/Rjt/2021 (Assessee's appeal), no separate order is need to be passed here. This appeal filed by the Revenue is, thus, dismissed.

ITA No. 24/Rjt/2021 (Revenue's appeal in case of Smt. Dimpleben Smitkumar Kaneria)

35. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

36. While reopening the assessment of the assessee before us, the following reasons were recorded by the ITO:

- “1. Assessee is an Individual. The assessee has filed return of income for A.Y.2012-13. As per ITD, her communication address isat 7-A/1, "SNEH-PRIY, Nandi Park, Opp.IOCL Quarters, University Road, Rajkot.
2. In this case, information was received from the DDIT(Inv.)-1, Vadodara vide letter No.DDIT (Inv)-I/Dissemination Raghuvir/Farm issue/2018-19, dated 16-03-2019. From the perusal of details, it is ascertained that there was a survey in the case of

M/s. Raghuvir Buildcon Pvt. Ltd. During the course of survey various incriminating documents have been found which pertains to sale of farmhouse at Village Yashvantpur, Taluka Lodhika, Dist. Rajkot for a consideration of Rs.38 crores by Raghuvir Group to Rajkot based businessmen. The assessee Smt. Dimpleben Smitkumar Kaneria, is one of the persons (purchaser) who involved in said transactions. The agreement of sale was signed by Mahendrabhai K Faldu, Mansukhbhai M Sureja (Patel) and Amit Chauhan. As per the agreement the buyers are stated as-Shri Mahendrabhai K Faldu, Shri Mauleshbhai D Ukani, Shri Amit A Chauhan, Shri M.M Patel, Shri Praveenbhai Pipaliya and the directors of Rajkot based M/s Kalptaru Leisure Pvt Ltd. The farm house is purchased to construct a club under the aegis of M/s Club Privilege Pvt Ltd. The actual deeds are executed by the wives/relatives/friends of the directors of the M/s Club Privilege Pvt Ltd. The assessee is wife of director, Shri Smitkumar Kaneria of M/s Club Privilege Pvt Ltd. The various plots of land have been subsequently transferred by way of gifts to Shri Kishor Purushottambhai Kaneria, brother of her husband Shri Smitkumar Kaneria, who is the actual purchaser in the ratio of their holding in the said farm land and her share of holding is 9.09% and share of investment for the F.Y.2011-12 is Rs.2,45,25,729/-.

3. *On analysis of data received by this office, it is found that the assessee is having 9.09% share in the farm house purchased. The assessee has made payment of Rs. 2,45,25,729/- in FY 2011-12 relevant to AY 2012-13. The amount of purchase is to be brought to tax in the year of payment. On verification of e-filing portal, it is found that the assessee has filed return of income for AY 2012-13 showing meagre income of Rs.3,690/- The assessee has not fully disclosed all the material facts in the return of income. Therefore, the source of assessee's investment in question remained Unexplained.*
4. *The detailed inquiry has been made by the DDIT(Inv.)-1, Vadodara and accordingly supplied the data to this office As per the information, it is gathered that the assessee is one of the purchasers of the farm house located at village Yashwantpur,. Tal. Lodhika. Assessee has paid an amount of Rs.2,45,25,729/- for purchase of the property, which is assessee's unaccounted income which is required to be brought to tax net.*
5. *As discussed in para 4 above, it is found that the assessee has paid an amount of Rs 2,45,25,729/- for purchase of farm house near Tal. Lodhika. Though the assessee has filed return of income showing meagre income as stated above, the amount of cash transactions involved is very high. Therefore, the payment of Rs.2,45,25,729/- made by assessee is assessee's unaccounted income which needs to be brought to tax net.*
6. *In view of the above facts, it is very clear that the assessee has made payment of Rs.2,45,25,729/- for purchase of farm house at village Yashwantpur, Tal. Lodhika, during the FY. 2011-12 which is assessee's unaccounted income. Though the assessee has filed return of income u/s 139 of the Act for the year under consideration, the source of such huge cash payment remained unexplained, which is required to be brought to tax. Thus the income to the extent of Rs.2,45,25,729/- has escaped assessment in this case, for which the case of the assessee for A.Y. 2012-13 needs to be re-opened within the meaning of section 147 of the I.T. Act. Therefore, I have reason to believe that income to the extent of Rs.2,45,25,729/- has*

escaped assessment. It is, therefore, requested that necessary approval may kindly be accorded for issuing notice u/s. 148 of the I.T. Act in this case.

7. *In this case return of income was filed for the year under consideration and assessment u/s 143(3) of the Act was passed on 15.02.2016. Since 4 years from the end of the relevant assessment year has expired in this case, the requirements to initiate proceedings u/s. 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on part of the assessee to disclose fully and truly all material facts necessary for her assessment for the year under consideration. It is pertinent to mention here that reason to believe that income has escaped assessment for the year under consideration have been recorded above (para-6). I have carefully considered the assessment records containing the submission made by the assessee in response to various notices issued during the assessment reassessment proceedings and have noted that the assessee has not fully and truly disclosed all material facts. necessary for her assessment for the year under consideration.*

It is evident from the above facts that the assessee had not fully and truly disclosed all material facts for her assessment for the year under consideration and thereby necessitating reopening u/s, 147 of the Act.

It is pertinent to mention here that in this case, various notice u/s. 142(1) was issued to the assessee requiring her to furnish all details as called for, which were material and necessary for assessment of her income. However, the assessee failed to disclose fully and truly all material facts for her assessment as narrated above. The assessee was well aware of her business dealings and particularly cash payments made for purchase of the above referred plots of land and she ought to have furnished full details of the said transactions. However, she furnished only the copies of sale/purchase deeds, but cash payment details and source of such cash payments were not disclosed. Thus, material facts as noted above could not with due diligence be discovered the AO; accordingly attracting provisions of Explanation 1 of section 147 of the Act.

It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the course of regular assessment/ reassessment. This fact is corroborated from the notices issued by the AO, material on record and various order sheet entries. It is important to highlight here that material facts relevant for the assessment of the issue(s) under consideration were not filed during the course of assessment proceedings and the same may be embedded in the submissions in such a manner that it would require due diligence by the AO to extract these information. For afore stated reasons, it is not a case of change of opinion by the AO.

In this case more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice u/s.148 is required to be obtained from Principal Commissioner of Tax, Rajkot-1, Rajkot as per the Provisions of section 151 of the Act.”

37. It appears that the name of the assessee before us was neither figured in Memorandum of Understanding nor was she the purchaser of the land in

question. However, the assessee was stated to be a purchaser of the land in question while recording reasons by the Ld. ITO. It was further recorded that the assessee made payment of Rs.2,45,25,729/- in A.Y. 2012-13. The assessee shown meagre income of Rs.3,690/- for the year under consideration and not fully disclosed all the materials facts in the return of income. The source of the assessee in making investment in the disputed land in question remained unexplained. It was further recorded by the Ld. ITO that the data supplied by the DCIT, Circle-1, Vadodara reveals this particular information of the assessee being a purchaser of the Farmhouse located at village Yashwantpur, Tal. Lodhika and payment was made by her as mentioned hereinabove from unaccounted income was required to be brought to tax. As the income to the extent of Rs.2,45,25,729/- of the assessee has escaped assessment, the case of the assessee for the year under consideration for A.Y. 2012-13 needs to be reopened within the meaning of Section 147 of the Act as the crux of the reasons so recorded by the ITO is admittedly contrary to the record, particularly, the Deed of Conveyance appearing at Page Nos. 43 to 55 of the paper book filed before us by the assessee. The assessee was found to be not a purchaser of the said plot of land as the case made out by the assessee also supported by this particular evidence being the Deed of Conveyance registered in respect of the transfer of Farmhouse situated at village Yashwantpur, Tal. Lodhika, Distt. Rajkot. In that view of the matter, as the very basis of reopening since made on incorrect recording of fact by the Ld. AO, the further proceeding cannot be said to be justified and liable to be quashed as the main case made out by the assessee before the Revenue and before us is found to be acceptable. Having regard to the entire aspect of the matter and the fact narrated hereinbefore, which has not been able to be controverted by the Ld. DR or by the Revenue with cogent corroborative

evidence, we find that the initiation of the proceeding by recording reasons on incorrect fact is having no force of law. In fact the same is void ab initio and the entire proceeding is thus rightly quashed and thus dismissed.

ITA No. 35/Rjt/2021 (Revenue's appeal in case of Sh. Smitkumar P. Kaneria)

38. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

39. In this particular case, upon perusal of the entire set of records and the deed of conveyance, it appears that the assessee before us was neither a party to the Memorandum of Understanding or the registered Deed of Conveyance. The reasons so recorded was also not found to be correct as it appears from Page Nos. 2 to 4 of the paper book filed before us. However, substantial addition was also made in the case of the assessee before us. It is relevant to mention that in ITA No. 24/Rjt/2021 in case of Smt. Dimpleben S. Kaneria, we have confirmed the deletion of addition made by the Ld. CIT(A) mainly on the initiation of proceeding on recording of reasons factually incorrect, the same is also applicable to the instant case. The assessee was neither a Director of the Company on the date of Memorandum of Understanding and became the Director much after that. Therefore, the said cannot be linked with the transaction at all. Moreso, no payment has been made by him. In regard to such transaction, we further find that almost same amount has been added in the case of the assessee's wife. Thus, substantive addition has been made in both the case, which is also not permissible in the eye of law. The Ld. CIT(A) while deleting addition concluded with these following observations:

“28. Under facts and circumstances of the present case, nowhere in the agreement to sale nor in any of the impounded materials, there is mention of the name of the appellant. In fact, none of the documents were found and impounded from the possession of any of the parties.

29. In light of the above facts and circumstances of the case, it is held that, no addition of alleged cash payment for purchase of land at village Yashvanthpur can be made in the hands of the appellant because, the appellant was never a party to the deal as per the agreement to sale. The agreement to sale is dated 5.5.2011 whereas, the husband of the appellant had become the director of the company in 20.06.2011. Nowhere in the impounded materials, there is mention of appellant having paid cash on money. Since the appellant entered in the deal subsequently, the interest payable for delayed payment is not attributable to her, since the original agreement to sale is not binding on her. The AO also erred in not referring the land to the DVO. Therefore, the addition made of Rs 2,45,25,729/- is directed to be deleted.

30. In the result, these grounds of appeal are also allowed.”

40. The Ld. DR has also not been able to controvert these admitted position at the time of hearing of the matter.

41. We, therefore, do not find any reason to interfere with such finding of the Ld. CIT(A) as already discussed hereinabove on the factual matrix of the matter. Taking into consideration the entire aspect of the matter, particularly, in the absence of any clinching evidence in support of alleged cash payment made by the assessee, the deletion of addition by and under the order dated 29.01.2021 by the Ld. CIT(A), is, therefore, found to be just and proper so as to warrant interference. The same is, therefore, confirmed. This appeal preferred by the Revenue, is, found to be devoid of any merit and thus dismissed.

ITA No. 36/Rjt/2021 (Revenue's appeal in case of Smt. Sonal Maulesh Ukani)

42. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

43. It appears that Ld. AO while reopening recorded that the assessee is a wife of the Director, namely, Shri Maulesh D. Ukani of M/s. Kalptaru Leisure Pvt. Ltd., was the actual purchaser in the ratio of their holding in the said land and 9.09 share of investment in the case of assessee for F.Y. 2011-12 at Rs.21,90,845/-. However, cash payment made by the assessee has not been able to be proved by the Revenue. Further that, assessee's name did not figure either in the Agreement to Sale or any other impounded material. More so, the documents were found and impounded from the possession of none of the parties. Neither in the seized cash book/data there is any mentioning of any cash payment made for the impugned land in question by the assessee and thus addition in the hand of the assessee was found to be incorrect by the Ld. CIT(A) while deleting the addition made by the Ld. AO. Apart from that, the assessee entered into deal at the very later stage and as her name did not figure in the Memorandum of Understanding, the allegation of payment of on money is not binding on her. The Ld. CIT(A), therefore, taking into consideration the entire aspect of the matter, deleted the addition which in our considered opinion is just and proper for the reason mentioned hereinabove so as to warrant interference. This ground of appeal filed by the Revenue is, therefore, found to be devoid of any merit and thus dismissed.

ITA No. 37/Rjt/2021 (Revenue's appeal in case of Shri Bhovan P. Rangani) & ITA No.42/Rjt/2021(Revenue's appeal in case of Shri Kishorbhai V. Viramgama)

44. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

45. In both these two matters, though addition was made on the basis of the name of the assessee's wife found in the registered Deed of Conveyance and with the conclusion that the assessee was the key person who negotiated the deal and paid the cash on money no corroborative clinching document is forthcoming from Revenue so as to support such addition to the tune of Rs.2,24,84,167/- in both the assessee's case in their hands. Relevant to mention that they were neither the party of Memorandum of Understanding nor of the registered Deed of Conveyance. No under recorded investment in land either in cheque or cash were found to be in their books of accounts. At this stage, we would like to mention that the case of the wife of assessee, namely, Shri Bhovan P. Rangani being Smt. Bhavnaben B. Rangani has already been dealt with by us wherein the deletion of addition made in the hands of the assessee's wife on substantive basis has been confirmed by us. The husband's case before us is also found to be identical and in that view of the matter, the protective addition wrongly made in the hands of the assessee before us is found to be rightly deleted by the Ld. CIT(A). Both these appeals are identical. We decline to interfere with such orders passed by the Ld. CIT(A) which are found to be just and proper. These two Revenue's appeals are, therefore, found to be devoid of any merit and thus dismissed.

ITA No. 28/Rjt/2021 (Revenue's appeal in case of Smt. Panchshilaben Jawaharbhair Mori), ITA No.29/Rjt/2021(Revenue's appeal in case of Smt. Bhavnaben Bhupendra Panchani), ITA No. 41/Rjt/2021 (Revenue's appeal in case of Smt. Joliben Mahendrakumar Fadadu) & ITA No.66/Rjt/2021(Revenue's appeal in case of Smt. Urmilaben Kishorbhai Viramgama)

46. We have heard the rival submissions made by the respective parties. We have also perused the relevant materials available on record.

47. The issue involved in these cases are identical and the impugned additions made by the Ld. AO on identical finding. The facts of the case has already been dealt with by us in ITA No. 22/Rjt/2021 in case of Smt. Bhavnaben B. Rangani. Relying upon the said fact, we would like to mention as follows:

None of the assessee's name figured in the Memorandum of Understanding, neither they are Directors of the Company on the date of disputed Memorandum of Understanding i.e. 05.05.2011. They are merely the co-purchasers of the property in question. The impounded materials never speak of any fact that could go against these assessee's as appeared from the documents filed before us. Relevant to mention that these documents were already been placed before the authorities below. Neither these documents were found and impounded from the possession of the any of the purchasers. None of the seized cash book/data mentions cash payment made by these assessee's for the impugned purchase of property at Yashvantpur Village.

49. We note that our these above findings also reflecting in the order passed by the Ld. CIT(A) in deleting addition as the assessee's were never a party to the deal as per the disputed Agreement for Sale dated 05.05.2011 and the husbands of these assessee's became the Directors of the company much after

the disputed date of Agreement for Sale. If that be so, the assessee cannot be said to be the party to on money payment as alleged by Revenue, particularly, when there was no mentioning of paying cash on money in those impounded materials. Apart from that, the assessee entered into the deal as subsequent to the Memorandum of Agreement, the interest on delayed payment as alleged to have been made by these assessee cannot be accepted as the same is not attributable to them. The original Agreement to Sale is not binding on them. Neither District Valuation Officer was referred in respect of valuation of the land by the Ld. AO. Under these premises, the deletion of addition made by the Ld. CIT(A) is found to be logical and therefore confirmed. These appeals, therefore, filed by the Revenue against these assessee are found to be devoid of any merit and thus dismissed.

50. In the combined result, all the appeals filed by the Revenue are dismissed and appeal filed by the assessee is allowed.

This Order pronounced on	16/11/2023
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 16/11/2023

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

S.K.SINHA

True Copy

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

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

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot