

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

आयकर(खोज-और-जब्ती)अपील सं/IT(SS)A Nos.23 & 24/SRT/2021

(Assessment Years: 2012-13 & 2013-14)

(Physical Hearing)

The DCIT, Central Circle – 3, Surat.	Vs.	Vijaybhai Malabhai Bharwad, B-58, Chandramani Apartment, Udhana Magdalla Road, Surat - 395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLPV4173C		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.118/SRT/2021

(Assessment Year: 2014-15)

Vijaybhai Malabhai Bharwad, B-58, Chandramani Apartment, Udhana Magdalla Road, Surat - 395007	Vs.	The ACIT, Circle -1(2), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLPV4173C		
(Appellant)		(Respondent)

आयकर अपील सं./ITA No.121/SRT/2021

(Assessment Year: 2014-15)

The DCIT, Central Circle – 2, Surat.	Vs.	Vijaybhai Malabhai Bharwad, B-58, Chandramani Apartment, Udhana Magdalla Road, Surat - 395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLPV4173C		
(Appellant)		(Respondent)

आयकर(खोज-और-जब्ती)अपील सं IT(SS)A Nos.90/SRT/2022

(Assessment Year: 2014-15)

Vijaybhai Malabhai Bharwad, B-58, Chandramani Apartment, Udhana Magdalla Road, Surat - 395007	Vs.	The DCIT, Central Circle – 3, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLPV4173C		
(Appellant)		(Respondent)

Appellant by	Shri Ritesh Mishra, CIT(DR)
Respondent by	Shri Sapnesh Sheth, CA
Date of Hearing	19/12/2023
Date of Pronouncement	27/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned five cross appeals, filed by the Assessee and Revenue for the Assessment Years (AYs) 2012-13, 2013-14 and 2014-15, all are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The concise and summarized grounds of appeal of Revenue's appeals and Assessee's appeals are as follows:

(i) The concise and summarized grounds of appeal in Revenue's appeals, in IT(SS)A No. 23/SRT/2021 for AY.2012-13 and in IT(SS)A No. 24/SRT/2021 for AY.2013-14, are as follows:

“(i) Ground Nos.1 to 4 on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s 153C of the Act, has to be confined to the incriminating material found during the course of search u/s 132(1) of the Act, even though, there is no such stipulation in section 153C of the Act. Various courts held that assessment in search case can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 of the Act.

(This covers ground no.1 to 4 in IT(SS)A No.23/SRT/2021, for AY.2012-13 and ground no.1 to 4 in IT(SS) No.24/SRT/2021, for AY.2013-14)

(ii) Ground No.5: Ld. CIT(A) has erred in deleting entire additions of Rs.2,20,51,918/- under section 68 of the Act on account of unexplained credit and Rs.30,65,650/- for want of evidences in respect of claim of agricultural income.

(This covers ground no.5 in IT(SS)A No.23/SRT/2021, for AY.2012-13 and ground no.5 in IT(SS)A No.24/SRT/2021, for AY.2013-14)”

(ii) The concise and summarized grounds of appeal in Assessee`s appeal, in IT(SS)A No.90/SRT/2022, for AY.2014-15, are as follows:

(i) Ground nos. 1 and 2: On the facts and circumstances of the case, as well as law, on the subject, the issuance of notice u/s 153C of the I.T. Act, 1961, in this case is bad in law, as no incriminating documents were seized or any material was found indicating any undisclosed income of assessee. The ld. CIT(A) erred in confirming the order passed by the Assessing Officer u/s 143(3) r.w.s. 153C of the I.T. Act, 1961.

(ii) Ground No.3: The Ld. CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.10,00,000/- u/s 69A of the I.T. Act, 1961.

(iii) Abated assessment year 2014-15, the concise and summarized grounds of appeal in Revenue`s appeal, in ITA No.121/SRT/2021 and Assessee`s appeal in ITA No.118/SRT/2021), are as follows:

(i) Ground No.1: The ld. CIT(A) has erred in admitting additional evidences under Rule 46A of the I.T. Rules by holding that sufficient time was not given to the assessee for submitting the relevant details during the course of assessment proceedings.

(This covers ground no.1 raised by Revenue in ITA No.121/SRT/2021 for AY.2014-15)

(ii) Ground Nos.2 and 3: The ld. CIT(A) has erred in deleting the addition of Rs.13,67,52,800/- made on account of unexplained cash credit without appreciating the findings given by the Assessing Officer in assessment order as well as in the remand report.

(This covers ground no.2 and 3 raised by the Revenue in ITA No.121/SRT/2021, for A.Y.2014-15 and ground No.1 raised by the Assessee in ITA No.118/SRT/2021, for A.Y.2014-15)

(iii) Ground No.4: The ld. CIT(A) has erred in deleting the addition of Rs.24,27,140/- made by the Assessing Officer on account of unexplained claim of agricultural income without appreciating the fact that the assessee has not carried out any agricultural activities on his own and

also failed to furnish evidences to substantiate receipt of agricultural income.

(This covers ground no.4 raised by the Revenue in ITA No.121/SRT/2021 for AY.2014-15)

(iv) On the facts and circumstances of the case, as well as law on the subject, the ld. CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs.1,01,41,034/- u/s 54B of the I.T. Act, 1961.

(This covers ground no.2 raised by the assessee in ITA No.118/SRT/2021 for AY.2014-15)”

3. Now we shall take above concised and summarized grounds of appeals, one by one.

4. First, we shall take Revenue's appeal in IT(SS)A No.23/SRT/2021 for AY.2012-13 and IT(SS)A No.24/SRT/2021 for AY.2013-14. Since, in these Revenues' appeal for AYs.2012-13 and 2013-14, the issues involved are common and identical; therefore, we shall adjudicate them together. The concise and summarized grounds of appeal in Revenue's appeals, in IT(SS)A No.23/SRT/2021 for AY.2012-13 and in IT(SS)A No.24/SRT/2021 for AY.2013-14, are reproduced below for ready reference as follows:

“(i) Ground Nos.1 to 4 on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding that any addition during the assessment u/s 153C of the Act, has to be confined to the incriminating material found during the course of search u/s 132(1) of the Act, even though, there is no such stipulation in section 153C of the Act. Various courts held that assessment in search case can be concluded against interest of assessee including making additions even without any incriminating material being available against assessee in search under section 132 of the Act.

(This covers ground no.1 to 4 in IT(SS)A No.23/SRT/2021, for AY.2012-13 and ground no.1 to 4 in IT(SS) No.24/SRT/2021, for AY.2013-14)

(ii) Ground No.5: The Ld. CIT(A) has erred in deleting entire additions of Rs.2,20,51,918/- under section 68 of the Act on account of unexplained credit and Rs.30,65,650/- for want of evidences in respect of claim of agricultural income.

(This covers ground no.5 in IT(SS)A No.23/SRT/2021, for AY.2012-13 and ground no.5 in IT(SS)A No.24/SRT/2021, for AY.2013-14)

5. The relevant material facts, as culled out from the material on record, are as follows. A search action under section 132 of the Act was carried out in the case of Vijay M. Bharwad Group of Surat on 27.12.2012 and Shri Vijay M. Bharwad, one of the assesseees, who were covered under the said search action. A search action u/s 132 of the Income Tax Act was also carried out on 04.09.2015 in the case of M/s Param Properties of Surat. During the course of search action, several incriminating documents and evidences were seized from the premises of M/s Param Properties which contain entries pertaining to and information contained therein related to Gokul Skyline project, developed by Shri Vijaybhai Malabhai Bharwad. Subsequently, notices u/s 153C of the Act, dated 17.10.2017, were issued to the assessee, for various assessment years, including the assessment years (A.Y.) under consideration. In response to the aforesaid notice u/s 153C of the Act, the assessee has filed his return of income for assessment year (A.Y.) 2013-14, on 14.11.2017, showing return of income at Rs.48,95,910/-. Subsequently, notice u/s 143(2) of the Act, was issued on 15.11.2017, which was duly served upon the assessee. In response to notice u/s 142(1) of the Act, the assessee attended from time to time and filed the details called for. During the year under consideration, the assessee has derived his income mainly from business income and other sources.

6. During the scrutiny proceedings for A.Y.2014-15, assessee was asked to furnish the details of unsecured loans. However, assessee failed to furnish the complete requisite details establishing the identity, genuinity and creditworthiness of the persons who had

tendered loans. During the year under consideration, many persons, out of the above, were identified as giving fresh loan, as well as receiving interest on such unsecured loan and details of the same is as under:

<i>S. No.</i>	<i>Name</i>	<i>Loan taken/added in the year under consideration</i>
1	ARVIND SHANTILAL SHAH	10,00,000
2	JIGARTEX	1,45,00,000
3	KHENGARBHAI M BAHDIYADARA	11230000
4	RAKESH JANGID	1,50,0000
5	MUKESH JAGDISH	88,61,058
6	CHHAGANBHAI HARIBHAI SINPHAV	2,40,000
7	BAVALBHAI HARIBHAI SINDHAV	1,83,464
8	HARIBHAI MERABHA! SINDHAV	2,40,000
9	MANUBEN RANCHODBHAI	6,08,000
10	RANCHODBHAI MALABHAI	52,40,000
	<i>Total</i>	<i>4,36,02,522</i>

The assessee was asked to show cause as to why the amount of fresh loan and interest received from earlier loans shown in the name of various persons should not be treated as non-genuine, as creditworthiness of these parties have already been disproved by the then AO in A.Y. 2014-15 and why the same should not be added to the total income. The assessee has not given any plausible explanation in this regard. Therefore, the Assessing Officer noted that it is the first and foremost duty of the assessee to give complete details of the creditors, Identity of creditor is required to be established along with creditworthiness and genuineness of transaction, is equally important for proving the actual/undisputable transactions. But in the instant case, the assessee failed to prove the existence of the above depositor and thus the genuineness of transactions and even the creditworthiness. The assessee merely by filing confirmations returns of income, balance sheet etc. that too partial and merely existence of

transactions through banking channel has not discharged the onus cast upon him. Looking into the facts and circumstance of the case; the failure was on the part of the assessee to prove the genuineness and creditworthiness of the parties from whom the assessee has taken unsecured loans. Hence, fresh loan shown to have been received in the name of various persons, whose creditworthiness has already been disproved in the A.Y.2014-15, are being treated as non-genuine and accordingly added to the total income of the assessee on account of unexplained cash credit. The assessing officer noted that since the matter is already in Appeal for AY.2014-15, and the loan amounts appear for the year under consideration, the necessary additions of Rs.4,36,02,522/- were made by Assessing Officer under section 68 of the Act.

7. On perusal of ground relating to agricultural return of income of the assessee it was noted by Assessing Officer that the assessee has shown agricultural income to the tune of Rs.31,55,500/-. The assessee was required to furnish various details and documents like details of agricultural activities carried out details of agricultural production and expenses, details and evidence of sale of agricultural produce etc. The assessee failed to furnish the above required details. The assessee has also not submitted the details of land in which the said produce is grown whose bills the assessee is submitting. As regards the nature of onus in case of an assessee claiming agricultural income, the Hon'ble High Court of Allahabad has held in the case *of Sint Prem Sundari vs CIT, 42 taxmann.com 178 [Allahabad]* that the assessee is supposed to maintain accounts pertaining to the entire agricultural activity and has to produce before the Assessing Officer in support of the claim of agricultural income. In the impugned case also the assessee has

claimed agricultural income of Rs.31,55,500/- in his return of income but has not adduced even an iota of evidence to substantiate the claim. Therefore, the assessing officer held that since the matter is already in Appeal for AY.2014-15 and agricultural income is claimed for the year under consideration, without complete details, establishing genuineness of the agricultural income, therefore addition of Rs.31,55,500/- was made by Assessing Officer.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. The Id CIT(A) noted that for the assessment year under consideration, there is no mention of any incriminating document found during the course of search, which has been made basis for making these additions by the Assessing Officer. Therefore, it is undisputed fact that the additions made by the Assessing Officer, are not based on any incriminating material found during the course of search even at the premises of third party. The Ld CIT(A) also relied on the case law of **PCIT Vs. Saumya Construction P. Ltd. (2016) 95 CCH 0335 Guj HC** and deleted the addition.

9. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

10. The Learned Senior Departmental Representative (Id. Sr. DR) for the Revenue, argued that there is a concrete reasons for assessing officer to make addition of Rs.4,36,02,522/- based on incriminating material found. Similarly, as regards the addition of Rs.31,55,500/- on account of bogus agricultural income, the assessee during the assessment proceedings, was specifically asked to provide the evidences in the respect of claim of agricultural income. However,

assessee had totally been failed in providing a single evidence. The assessee could not even produce the details of agricultural land from where the assessee had claimed to have earned the agricultural income. However, the Ld.CIT(A) without discussing the issue on merits, deleted the addition merely stating that the addition is not based upon the incriminating seized documents, which is not acceptable. Therefore, ld DR contended that addition made by the assessing officer may be upheld.

11. On the other hand, Ld Counsel for the assessee contended that the additions made by the Assessing Officer are not based on any incriminating document found during the course of search even at the third party premises. Therefore, Ld. Counsel for the assessee defended the order passed by the ld. CIT(A).

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that two grounds of appeal of Revenue, are against the additions of Rs.4,36,02,522/- and Rs.31,55,500/- made by the Assessing Officer, considering the loans and agricultural income as non-genuine. The Ld Counsel for the assessee contended that the additions made by the Assessing Officer are not based on any incriminating document found during the course of search, even at the third party premises. The Assessing Officer made additions of Rs.4,36,02,522/- u/s 68 of the Act, considering several unsecured loans as non-genuine, which were already disclosed in the regular return of income filed before the Assessing Officer. The

other additions of Rs.31,55,500/- have been made on account of bogus agricultural income, as considered by the Assessing Officer. The Ld Counsel contended that there is no mention of any incriminating material which was found during the search at third party premise and has been made basis of these additions, therefore, these additions were rightly deleted by the Id CIT(A).

13. Therefore, we note that additions made by the Assessing Officer, while passing the assessment order u/s 153C of the Act, were without mentioning of any incriminating material found during the course of search, therefore addition made by the assessing officer is not justified. The assessee filed regular return of income on 31.03.2014 and on the date of search, no proceedings were pending. Once completed assessments cannot be interfered, if no incriminating material was found, during the course of search. The assessee cited several case laws before Id CIT(A). The assessee also submitted the judgment of jurisdictional High Court of Gujarat in the case of PCIT Vs. Saumya Construction P. Ltd. (2016) 95 CCH 0335 (Guj HC). During the year consideration, the Assessing Officer has made additions of Rs.4,36,02,522/- considering loan as non-genuine by applying section 68 of the Act, however, these loans were examined by the assessing officer during regular assessment proceedings, hence these loans were not incriminating material, therefore, Id CIT(A) deleted the addition. The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the ground raised by the revenue.

14. As regard second addition of Rs.31,55,500/-, which was made by the assessing officer considering the agricultural income as bogus. We note that assessment has been made u/s 153C of the Act, as the search was conducted on 04.09.2015, in the case M/s Param Properties and during the course of search, some documents belonging to the assessee were found pertaining to few assessment years. However, for the assessment year under consideration, there is no mention of any incriminating document found during the course of search/which has been made basis for making these additions by the Assessing Officer. Therefore, Id CIT(A) observed that it is undisputed fact that the additions made by the Assessing Officer are not based on any incriminating material found during the course of search even at the premises of third party. Before, Id CIT(A), the assessee cited several case laws including case laws of PCIT Vs. Saumya Construction P. Ltd. (2016) 95 CCH 0335 (Guj HC) delivered by the Hon'ble jurisdictional High Court of Gujarat, in which it has been held that additions made by the Assessing Officer while passing order u/s 153A of the Act without mentioning the Incriminating materials found during the course of search are not justified. Therefore, the additions made by the Assessing Officer while passing assessment u/s 153C of the Act are also not justified, as the income of the assessee is to be determined as per the provisions of sections 153A of the Act while passing order u/s 153C of the Act. Therefore, Id CIT(A) observed that the assessee's case is clearly found covered by the above mentioned binding decisions of the Hon'ble Jurisdictional High Court Gujarat. The assessee's case is further found covered by the following case laws:

- (i) *CIT Vs. Kabul Chawla (2015) 61 taxmann.com 412 (Delhi) by Hon'ble Delhi High Court*
- (ii) *PCIT Vs. Devangi Alias Rupa (2017) 98 CCH 0051 (Guj. HC) by Hon'ble Gujarat High Court*
- (iii) *PCIT Vs Dipak Jashvantlal Panchal (2017) 98 CCH 0407 (2017) 397 ITR 0153 (Guj HC) by the Hon'ble Gujarat High Court*

15. Therefore, Id CIT(A) held that keeping in view of facts that additions made by the Assessing Officer were not based on any incriminating material found during the course of search, even at the third party premises, and the binding judgement of Hon'ble High Court of Gujarat, as mentioned above, the additions made by the Assessing Officer were not found justified, hence, Id CIT(A) deleted the addition. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

16. In the result, concise and summarized grounds of appeal in Revenue`s appeals, in IT(SS)A No.23/SRT/2021 for AY.2012-13 and in IT(SS)A No.24/SRT/2021 for AY.2013-14, are dismissed.

17. Coming to Assessee`s appeal in ITA No.90/SRT/2022 for A.Y.14-15, we note that said appeal filed by the assessee is barred by limitation for one hundred sixty five (165) days. The contents of petition for condonation of delay are reproduced below:

"1. With regards to above subject, it is submitted that I am in receipt of order u/s 143r.w.s 153C of the I.T. Act on 09.03.2022. As such the appeal against the said order should have been filed on or before 08.05.2022. However, I could not file appeal before the above date and there is delay in filing appeal owing to reasons beyond my control.

2. In this regards it may please be noted that my parents are old and I have to frequently visit out of station with them for their treatments and medical related reasons. They have various health ailments & to take proper treatment, I have to go out of station. Due to their health problems, I was under mental tension & lost sight of the above deadline for filing of appeal. However, I have no intention in not complying with laws of the Statute & delay in filling appeal is purely due to bona fide reasons only.

3. Here, it is also pertinent to refer to the judgement of Honourable Supreme Court in the case of Collector, Land Acquisition V. MST. Katiji & Ors. - 167 ITR 471. wherein it was held that "sufficient cause" for the purpose of condonation of delay should be interpreted with a view to do even-handed justice on merits in preference to approach which scuttles a decision on merits. This decision of Supreme Court is applied by Gujarat High Court in the case of Dinesh Nagindas Shah V. CIT- 273 ITR 229."

18. Learned Counsel for the assessee pleaded that assessee used to frequently visit out of station for treatments and medical related reasons of his parents. The assessee's parents have various health ailments and due to their health problems, the assessee was under mental tension and lost sight of the deadline for filing of appeal. The assessee has no intention in not complying with laws of the Statute and delay in filling this appeal is purely due to bona fide reasons only, hence delay may be condoned.

19. On the other hand, the Ld. DR for the Revenue, argued that assessee has failed to explain the sufficient cause, therefore delay should not be condoned.

20. We have heard both the parties on this preliminary issue. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing the appeal. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of

litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) observes

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.”

When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We, therefore, condone the delay and admit the appeal for hearing.

21. The concise and summarized grounds of appeal in Assessee's appeal, in IT(SS)A No.90/SRT/2022, for AY.2014-15, are reproduced below for ready reference as follows:

“(i) Ground nos. 1 and 2: On the facts and circumstances of the case, as well as law, on the subject, the issuance of notice u/s 153C of the I.T. Act, 1961, in this case is bad in law, as no incriminating documents were seized or any material was found indicating any undisclosed income of assessee. The ld. CIT(A) erred in confirming the order passed by the Assessing Officer u/s 143(3) r.w.s. 153C of the I.T. Act, 1961.

(ii) Ground No.3: The Ld. CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs.10,00,000/- u/s 69A of the I.T. Act, 1961.”

22. Brief facts *qua* the issue are that the assessee had filed his return of income u/s 139 of the Income Tax Act, 1961 for A.Y.2014-15 on 31.03.2015, declaring total income of Rs.1,07,43,930/-. The assessee's case was selected for scrutiny under CASS and order u/s 143(3) of the Act for A.Y. 2013-14, was finalized on 30.12.2016, assessing the income at Rs.19,38,03,255/-. Further, a search action u/s 132 of the Act was carried out on 04.09.2015, in the case of M/s Param Properties of Surat. During the course of search action, several

incriminating documents and evidences were seized from the premises of M/s Param Properties, which contain entries pertaining to and information contained therein related to Gokul Skyline project, developed by Shri Vijaybhai Malabhai Bharwad. Consequent to the said search-action, jurisdiction over this case was transferred to another AO, vide order u/s 127(2) of the Act bearing No. SRT/Pr.CIT-1/HQ/Jurisdiction/ 2017-18 dated 25.09.2017, passed by the Pr. CIT-1, Surat on 25.09.2017. Subsequently, notices u/s 153C of the Act dated 17.10.2017, were issued to the assessee, for various assessment years including the A.Y. under consideration. In response to the aforesaid notice u/s 153C of the Act, the assessee has filed his return of income for assessment year (A.Y.) 2014-15 on 14.11.2017 showing return of income at Rs.1,07,43,930/-. Subsequently, notice u/s 143(2) of the Act was issued on 15.11.2017 which was duly served upon the assessee. Thereafter, notice u/s 142(1) of the Act, along with questionnaire dated 27.11.2017, was issued to the assessee and the same was also duly served upon him. In response to aforesaid notices u/s 143(2) and 142(1) of the Act, the assessee, attended from time to time and filed the details called for.

23. During the year under consideration, the assessee has derived his income mainly from business income and other sources. A search action was carried out in the case of M/s Param Properties on 04.09.2015, wherein several incriminating documents were found and seized in the name of “Gokul Skyline” project, wherein the assessee is a key person. These documents are basically copies of diaries of units of the said project, as seen at page nos. 17, 18, 46, 47, 48 and 49 of Annexure: BS-51, which reveals acceptance of huge cash amounts for

booking of flats in this project by the assessee. There are also various other seized materials such as Annexure BS-47 and Page no. 27 & 28 of Annexure BS-8, which also reveals acceptance of cash amounts for booking of flats. These seized documents pertain to A.Ys. 2014-15 to 2016-17. The assessee, vide notice u/s 142(1) of the Act, dated 16.11.2017 was asked to explain these transactions and to furnish the details of flats mentioned in the seized material. The assessee vide his submission dated Nil received by the Assessing Officer on 08.12.2017 has clearly denied of developing any such project either in his individual capacity or as partner of any firm. The assessee flatly denied having entered in any such transactions in respect of such project/flats mentioned therein.

24. However, the assessing officer has rejected the contention of the assessee and noted that partners of Param Properties having admitted to have written the aforesaid documents in his own handwriting lends credibility whereby the document seized assumes much greater value than what it would have been otherwise. Moreover, the assessee could not put forth a single argument to contradict the findings of the search and even did not file any submission to explain the transactions reflecting in the seized documents. Accordingly, receipts in respect of Gokul Skyline project reflecting in the seized material at Rs. 10,00,000/- was added to the total income of the assessee on account of unexplained cash receipts.

25. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Id. CIT(A), who has confirmed the action of Assessing Officer, observing as follows:

“5. **DECISION:**

Submission of the assessee and the assessment order has been carefully considered. The facts of the case in brief as mentioned in assessment order are that a search action u/s 132 of the Act, 1961 was carried out on 04.09.2015 in the case of M/s. Param Properties of Surat. During the course of search action, several incriminating documents and evidences were seized from the premises of M/s. Param Properties which contained entries pertaining to and information therein related to Gokul Skyline project, developed by Shri Vijaybhai Malabhai Bharwad i.e. the assessee were found & seized. Therefore, the assessee was issued notice u/s. 153C of the Act after recording the satisfaction.

5.1 Ground No. 1 & 2: Both these grounds are against the issuance of notice u/s. 153C of the Act and assumption of jurisdiction by the AO which was claimed to be bad in law particularly when no incriminating document was seized or any material was found, indicating any undisclosed income of the assessee. The assessee stated that as no material was found at the premises of M/s. Param Properties which belonged to the assessee and therefore, notice issued u/s. 153C of the Act was bad in law. The assessee cited several case laws in support of this contention.

5.2 The contention of the assessee and facts of the case have been considered with reference to the provisions of Income-Tax Act as well as the case laws cited by the assessee. The provision of Section 153C of the I.T. Act are reproduced for the sake of clarity;

“(I) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153 A, then, the books of account or documents' or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed, against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such- other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132 A in the second proviso to sub-section (1) of section 153 A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-; section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132 A and in respect of such assessment year—

(a) no return-of income has been furnished by such other person and no notice under sub-section (1) of section. 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any has been made,before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

As seen above, if the Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A, the Assessing Officer shall proceed against each such other person and issue a notice and assess or reassess the income of the other person in accordance with the provision of section 153A of the Act. The Assessing Officer has duly recorded the satisfaction for issuing the notice u/s 153C of the Act. Further, it is not the contention of the assessee that the Assessing Officer has not recorded the satisfaction in the assessee's case. It is fact that some documents have been found at the premises of M/s.

Param Properties which belong to the assessee and the Assessing Officer has discussed these while passing the assessment order as well. Therefore, Assessing Officer was right in issuing notice u/s 153C of the Act, hence, Ground No.1 & 2 of appeal are dismissed.”

26. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

27. At the outset, the Ld. Counsel for the assessee, pleaded that the satisfaction note dated 16.10.2017 recorded, for initiating the proceedings under section 153C of the I.T. Act, 1961, is defective and bad in law, therefore assessment framed under section 153C r.w.s. 143(3) of the Act may be quashed. The Id Counsel took us through the satisfaction note, which is reproduced below:

PROFORMA FOR RECORDING SATISFACTION UNDER SECTION 153C	
(To be filled by the Assessing Officer of the person referred to in section 153A).	
1. Name of the Group searched	PARAM GROUP OF SURAT
2. Name and PAN of the person referred to in section 153A	M/s. Param Properties, PAN-AAPFP5028G
3. Date of initiation of search in the case of the person referred to in section 153C is proposed	04.09.2015
4. Name, address and PAN of the person in whose case action under section 153C is proposed	Shri Vijay Malabhai Bharwad (ACLPV 4173C) Address- B-23-24, Chanaramani Society Udhna Magdalla Road, Surat
5. Specific details of the seized material on the basis of which action under section 153C is proposed:	<p>During the course of search proceedings conducted u/s.132 of the I.T. Act, 1961 in the case of Param Properties, several documents and evidences in the name of 'Gokul Skyline' were seized. This project is developed by M/s. Gokul Developers. However, on verification from the ITD database, it was ascertained that no PAN is allotted to such an entity. Hence, it appears that this project is undertaken by Shri. Vijaybhai Malabhai Bharwad in his individual capacity who is the founder of Gokul Developers. The seized evidences in the case of M/s. Param Properties reveal receipt of huge cash amounts against booking of units in this project.</p> <p>Details of the seized document is as under-</p> <ol style="list-style-type: none">BS-8- Page 27 & 28- Details of payment in respect of the project Gokul Skyline undertaken by Gokul group. Amount involved is Rs.4,69,25,000/-.BS-8- Page 30- Details of payment in respect of the project Gokul Skyline undertaken by Gokul group. Amount involved is Rs.2,03,30,000/-.BS-8- Page 33 to 36- Details of payment in respect of 'Gokul Skyline' project, the printout of which was given to the assessee by the builder, Shri. Vijay Bharwad. Amount involved is Rs.2,53,25,000/- on page no. 33, Rs. 30,30,000/- on page no. 34, Rs.20,78,000/ - on page. 35 & Rs.29,41,000/- on page no. 36.BS-47 Page 1 & 2- This is an original diary issued by Gokul group, in respect

(2)
of flat no. C -704 of the project 'Gokul Skyline'. Page no. 2 of this diary specifies the rate as Rs. 3651/ - per sq. ft., which is written in coded form as 36 /51. This diary reflects cash payments of Rs.5,00,000/ - and a cheque payment of Rs.3,60,000/ - on 03.06. 2015.

5. **BS-51 Page 17 & 18-** This is a zerox copy of a page of the original diary issued by Gokul Group in respect of its Gokul Skyline project, wherein, the booking rate is Rs.3651/- per sq. ft. The flat featuring on this page is D-703. The assessee has not identified the purchaser. The developer is M/s. Gokul Developers. The cash payments reflecting on page no. 18 is Rs.24,00,000/ - received in F.Y . 2014-15.

6. **BS-51 Page 46 to 49-** This is the zerox copy of the original diary issued by Gokul group in respect of unit nos. B-203, F-302 of 'Gokul Skyline' project. The cash payments reflecting on these pages were received by the builder in F.Y. 2014-15. These pages reveal cash receipts of Rs.54,00,000/- by the builder.

In nutshell, seized documents in the case of M/s. Param Properties evidencing huge cash receipts against booking of units in the project of GOKUL SKYLINTE amounting as under-

SR NO	NAME OF THE ASSESSEE	PAN	F.Y.	CASH RECEIPTS
1.	GOKUL SKYLINE (VIJAYBHAI M BHARWAD)	ACLPV 4173C	2013-14	1000000
			2014-15	68460000
			2015-16	46925000

Thus, in this case proceeding u/s.153C of the Act need to be initiated for coordinated and effective investigation.

(a) Nature of the seized material (money/ bullion/ Jewellery/ other valuable article or thing/ books of account/ documents)	Documents.
(b) Description of the seized material	Details of payments/receipts in respect of the Project GOKUL SKYLINE

(c) Address of premise/ place from where such material was seized	403, Poddar Plaza , Opp. Fire Station , Ghod Dod Road , Surat .
(d) Date of seizure of such material	04.09.2015
(e) Particulars of the relevant panchnama	---
(f) Annexure / Sr. No./ Page No. etc. (particulars to be specified)	BS-8- Page 27 & 28, BS-8- Page 30, BS-8- Page 33 to 36, BS-47 Page 1 & 2, BS-51 Page 17 & 18, BS-51 Page 46 to 49
6. Relationship of the person referred in S. No. 4 with the person referred to in S. No. 2	Client & Broker
7. Satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S. No. 5 belongs to the person referred to in S. No. 4	Yes
8. Whether AO is satisfied that seized material have a bearing on the determination of total income	Yes on the basis of above facts, I am satisfied that the documents have a bearing of total income.
9. Assessment Years involved	2010-11 to 2015-16 & 2016-17

Date: 16/10/2017
Place: Surat

(MALVIKA GARG)
Deputy Commissioner of Income tax,
Central Circle-3, Surat

28. On the other hand, Id DR for the Revenue, stated that satisfaction note dated 16.10.2017, for initiating the proceedings under section 153C of the I.T. Act, 1961, does not contain any defect and satisfaction note has been recorded as per the provisions of the Act.

29. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that search was conducted in case of assessee (Vijay M. Bharwad) on 27.12.2012. Thereafter,

search was conducted in case of Param properties on 04.09.2015 and during such search documents related to Gokul Skyline Project, (as per Department, the said project, namely, Gokul Skyline Project, was developed by assessee - Vijay M. Bharwad) was found. The satisfaction note was recorded on 16.10.2017, which is after two years from the date of search in case of Param properties, on 04.09.2015. We note that in the satisfaction note, it is stated by the Income Tax Authority (AO) that on verification of ITD-data base, no PAN number is allotted to Gokul Skyline Project. However, Id Counsel submitted before us an order passed by the assessing officer under section 143(3) of the Act, dated 27.02.2015, for assessment year, 2013-14, in case of M/s Gokul Developers along with PAN Card. Therefore, belief of the assessing officer that M/s Gokul Developers, was not allotted PAN Number, is not correct. Therefore, we note that satisfaction note was recorded by the assessing officer without any base.

30. We note that assessment framed by assessing officer under section 143(3) of the Act, dated 27.02.2015, for assessment year, 2013-14, in case of M/s Gokul Developers contains PAN Number as : ACDFS2431E, moreover, as we have noted that assessment order is dated 27.02.2015, which is prior to search conducted in case of Param Properties dated 04.09.2015, hence there is complete non -application of mind by the assessing officer to declare M/s Gokul Developers that it does not have PAN Number.

31. We note that assessee's (Vijaybhai Malabhai Bharwad) PAN Number is ACLPV4173C, whereas M/s Gokul Developers PAN Number is ACDFS2431E, hence both the entities are different for

levy of tax under Income Tax Act. The assessee's (Vijaybhai Malabhai Bharwad) having different PAN Number cannot be held responsible to tax the receipts, if any, belonging to M/s Gokul Developers. The assessing officer should have issued notice under section 153C of the Act, separately on M/s Gokul Developers, who is having PAN Number as, ACDFS2431E. Therefore, satisfaction note has not been recorded on standalone basis for M/s Gokul Developers, hence the satisfaction note recorded by the assessing officer is bad in law. We are of the view that satisfaction note under section 153C of the Act ought to have been issued either on Shri Gokul Developer or Shri Jigar B. Shah, which the Assessing Officer has failed to do so, therefore assessment framed under section 153C/143(3) of the Act, framed in the assessee's hands, should be quashed. Therefore we quash the assessment order framed by the assessing officer under section 143(3) r.w.s. 153C of the Act, dated 29.12.2017.

32. As the assessment orders framed by the Assessing Officer under section 143(3) r.w.s. 153C of the Act, dated 29.12.2017, itself are quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

33. In the result, grounds Nos. 1 and 2 of Assessee's appeal, in IT(SS)A No.90/SRT/2022, for AY.2014-15, are allowed.

34. Now, coming to the summarized ground nos.(i), (ii) and (iii) of the appeal in ITA No.121/SRT/2021 for AY.2014-15, in Revenue appeal and in ITA No.118/SRT/2021 in assessee's appeal, these grounds are reproduced below for ready reference as follows:

(i) Ground No.1: The ld. CIT(A) has erred in admitting additional evidences under Rule 46A of the I.T. Rules by holding that sufficient time was not given to the assessee for submitting the relevant details during the course of assessment proceedings.

(This covers ground no.1 raised by Revenue in ITA No.121/SRT/2021 for AY.2014-15)

(ii) Ground Nos.2 and 3: The ld. CIT(A) has erred in deleting the addition of Rs.13,67,52,800/- made on account of unexplained cash credit without appreciating the findings given by the Assessing Officer in assessment order as well as in the remand report.

(This covers ground no.2 and 3 raised by the Revenue in ITA No.121/SRT/2021, for A.Y.2014-15 and ground No.1 raised by the Assessee in ITA No.118/SRT/2021, for A.Y.2014-15)

(iii) Ground No.4: The ld. CIT(A) has erred in deleting the addition of Rs.24,27,140/- made by the Assessing Officer on account of unexplained claim of agricultural income without appreciating the fact that the assessee has not carried out any agricultural activities on his own and also failed to furnish evidences to substantiate receipt of agricultural income.

(This covers ground no.4 raised by the Revenue in ITA No.121/SRT/2021 for AY.2014-15)

35. About above ground no.(i), the ld DR for the Revenue argued that ld. CIT(A) has erred in admitting additional evidences under Rule 46A of the I.T. Rules. The ld DR pointed out that what was prevented to the assessee to submit these additional evidences before the assessing officer, has not been explained by the assessee, hence additional evidences ought not to have admitted by the ld CIT(A). On the other hand, ld Counsel submitted that sufficient time was not given to the assessee for submitting the relevant details during the course of assessment proceedings. We have heard both the parties and note that assessee has explained the reasons stating that sufficient time was not given to the assessee for submitting the these evidences before the AO hence ld CIT(A) has rightly admitted these additional evidences, therefore we dismiss the ground raised by the revenue.

36. In the result, ground no.1 raised by Revenue in ITA No.121/SRT/2021 for AY.2014-15, is dismissed.

37. Coming to ground Nos.2 and 3, which pertain to deletion of the addition of Rs.13,67,52,800/- by Id CIT(A), and the Revenue and Assessee both are in appeal before us.

38. Brief facts *qua* above ground Nos.2 and 3 are that assessee filed return of income declaring an income of Rs.1,07,43,930/- on 31.03.2015. Case of the assessee was selected under scrutiny through CASS, hence a notice u/s 143(2) was issued to the assessee, on 31.08.2015, which was duly served. Subsequently, a notice u/s 142(1) cum questionnaire was issued to the assessee on 17.08.2016. As per the terms of the notice, the assessee was required to submit the details on 26.08.2016. On the date of hearing no one appeared nor the submissions were filed before the Assessing Officer. During the course of assessment proceedings, considering the non-compliance of assessee, the assessee was asked to furnish the details of the unsecured loans vide letter of this office No. ACIT/Cir-1(2)/SRT/VMB/453/Scru.14-15/2016-17 dated 04.11.2016. In response to the notice, the assessee submitted written submission about the new unsecured loans of Rs.18,68,19,561/-. The AO noted that books of the assessee are also not audited so the transactions of the loans are not verified by the certified auditor either. The assessee submitted few details vide letter dated 16.12.2016. As per the submission filed by the assessee it was noted by Assessing Officer that the assessee had shown names of the alleged lenders. On the basis of examination of the returns of income, bank account statements, nature of transactions, it was found necessary to examine the real

nature of the transactions apparently shown as unsecured loans. It was observed by Assessing Officer that all the parties except in the case of Juliben V. Bharwad and Vijay Bharwad HUF and Jagdish Bhadyadaria, having no apparent business connection with the assessee and are shown lending substantial amounts. The assessee has not given complete details of these parties, a general analysis also reveals that the money is rotated in persons of little means and the assessee has used these for bringing unaccounted income into the books. With these facts on record, the discussion in relation to cash credits was made by the Assessing Officer in the assessment order.

39. During the assessment proceedings, having analyzed each loan the Assessing Officer noted that during the year, assessee has accepted new unsecured loan to the tune of Rs.18,67,00,000/-, out of said total loan, the Assessing Officer noted that reported loans were to the tune of Rs.10,91,39,119/-, Rs.2,00,00,000/- and Rs.1,49,25,000/-, and unreported unsecured loan was noted by Assessing Officer to the tune of Rs.4,26,35,881/-. However, in conclusion the assessing officer made the addition on account of loans to the tune of Rs.16,94,90,881/- (Rs.4,26,35,881 + Rs.1,49,25,000 + Rs.2,00,00,000 + Rs.9, 19,30,000).

40. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has partly deleted the addition made by the Assessing Officer. The Id CIT(A) made the analysis of individual parties observing as follows:

“9.2 First ground of appeal is against the additions of Rs.16,94,90,881/- made by the AO considering unsecured loans as non genuine u/s 68 of the Act. The assessee has taken unsecured loan from several persons, therefore, each loan is discussed separately in the following paras after

considering the assessment order, remand report, submissions of the assessee alongwith paper book filed & rejoinder.

i) Shri Manharbhai C. Patel: - The assessee obtained loan of Rs.3,75,00,000/ from Shri Manharbhai C. Patel during the year. As mentioned in the assessment order (Page 10 Sr. No. 4), the assessee submitted confirmation from creditor, copy of PANs and acknowledgment of IT return filed. The assessee also submitted copy of bank account of Shri Manharbhai C. Patel stating that source of loan is through transfer/clearing in the said bank account. During the remand report proceedings, summon u/s 131 of the Act was issued to Shri Manharbhai C. Patel but it was informed that he is out of India & cannot be personally available before the AO. But AR of Shri Manharbhai C. Patel appeared before the AO and submitted ledger amount of the assessee from Manharbhai's books of accounts, copy of bank statement & copy of ITR filed for AY 2014-15, in which returned income shown is Rs. 82,36,063/-. Apart from this returned income, Shri Manharbhai had exempt income of Rs.81,29,185/- as share of profit from partnership firm. Thus gross income of Manharbhai FY 2014-15 is Rs. 1,63,65,245/- and capital balance is of Rs.27,94,09,173/-. In the assessment order, the AO gave the reason as small income of the creditors for making the addition of this loan, but the same proved factually incorrect by the documents filed before the AO even during the assessment proceedings. In the remand report (Page 18 & 19 Sr. No. 1), the AO stated that there was credit of amount in the bank account of Shri Manharbhai C. Patel immediately before issuing cheque to the assessee through transfer/clearing. No cash deposit has been found by the AO in the bank account of the creditor. The assessee stated that first cheque of Rs. 2 cr was given on 16.05.2013, against which only Rs. 23 lacs is credited into bank account of Manharbhai C Patel and remaining amount was from his credit balance already lying in the account. The creditor was having credit balance of more than Rs. 2 cr. for last one month. The assessee further stated that even after issue of second cheque of Rs. 1 cr on 05.08.2013, the creditor was having credit balance of Rs. 4,73,46,863/- in his bank account. Thus the finding of the AO as given in the remand report are too found factually incorrect. Moreover, out of the loan amount of Rs. 3.75 cr, Rs. 1 cr was returned on 11.12.20.14 through regular banking channel. Further Rs. 50 lac were repaid on 27.02.2019. Keeping in view the facts narrated above, the loan taken from Shri Manharbhai C. Patel amounting to Rs. 3.75 cr. is found genuine as the assessee proved the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor beyond doubt, thus, additions of Rs. 3,75,00,000/- are **deleted**.

ii) Shri Jigar B. Shah Prop. Of Jigar Tex: - The assessee obtained loan of Rs.1.68 cr. from Shri Jigar B. Shah. During the assessment proceedings, the assessee filed confirmation, acknowledgment of ITR and bank statement of the creditor. The AO made additions stating small income of the creditor and there are few cash deposit in the bank account before issuing cheques to the assessee for which assessee submitted that cash deposit in the

creditor's account are duly accounted and same can be proved producing cash book & creditors himself before the AO (Page No. 11 Sr. No. 5 of the assessment order). During the remand report proceedings, summon was issued to Shri Jigar Shah who appeared before the AO & his statement was recorded u/s 131 of the Act on 30.05.2018. Before the AO, he confirmed on oath about the loan of Rs. 1.68 cr. given to the assessee. He further stated that he & the assessee are partner in M/s Gokulul Developer, a partnership firm engaged in the business of development of real estate. He also stated that there was opening balance of Rs. 1.45 cr as on first date of financial year. During the year, the assessee paid Rs.2.40 cr. to Shri Jigar Shah & out of which, Rs.1.68 cr. were paid to the assessee. He submitted ledger of the assessee from his books of accounts. But the AO stated that bank statement of the editor was not submitted. The findings of the AO in the remand report are contrary to the findings mentioned in the assessment order. In the assessment order on page no. The AO stated that the assessee submitted bank statement of the creditor and he find some cash deposits in the said bank account. Thus findings of the AO in remand report factually incorrect. The AO is silent on cash deposits in the creditor's bank account in the remand report. The AO stated small income as reason for the additions, but the assessee's returned income is Rs.17.04 lakh apart from Rs.4.35 lakh an exempted agriculture income for AY 2014-15.

The facts stated above clearly prove that the assessee and creditor have regular financial transactions. There are 26 transactions during the year. The opening balance was there, which has not been disturbed by the AO by reopening of the assessee's case by issuing notice u/s 148 of the Act. The entire loan was repaid by the assessee from his account maintained with Kotak Mahindra Bank during FY 2014-15 i.e. immediate next year through 7 transactions. As the creditors presented himself before the AO, submitted all necessary documents to prove identity, genuineness of the transaction & his creditworthiness, therefore, it is held that the assessee has proved identity of creditor, genuineness of the transaction & creditworthiness of the creditor. Thus, additions of Rs. 1.68 cr. are deleted.

iii) **Balvantbhai D. Patel:** The assessee obtained loan of Rs.1 cr. from Shri Balvantbhai D. Patel. The assessee submitted detail on 21.12.2016 before the AO. The AO stated that the detail is submitted at the fag end of the year for the first time. The creditor has small income, thus creditworthiness is not proved. He has been utilized to route assessee's own money, thus genuineness is also not: proved. (Page 34 of the assessment order). During the remand report proceedings, the AO issued summons to the creditor, who appeared before the AO & his statement was recorded u/s 131 of the Act on 30.05.2018. The creditor confirmed the loan given to the assessee. The creditor submitted copy of assessee's ledger account from his books of accounts, copy of his ITR filed and copy of his bank statement before the AO. During the statement on asking about source of the loan given, Shri Balvant D Patel stated that he received loan from his family members & their names were given to the AO. The loan amount has been fully repaid by the assessee during FY 2015-16 and all

these facts are written by the AO in the remand report at page no. 22 & 24. But AO is not satisfied for the reason that the creditor did not provide PAN & address of people from whom he received money to give loan to the assessee. But the creditor stated that he obtained loan from his family members and all transaction are through normal banking channel. No cash was found deposited in the bank account of the creditor immediate before issue of cheque to the assessee. The AO's finding in the assessment order stating assessee had small income found factually incorrect, as alongwith the returned income of Rs. 307460/-, the assessee had exempted income of Rs.31,25,000/- as share of profit from the partnership firm M/s DRB Ravani Developers & Rs.1,67,908/- was his agricultural come. Keeping in view the facts narrated above, the assessee has discharged his onus to prove identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. Thus, additions of Rs.1,00,00,000/- are deleted.

iv) **Shri Nareshbhai Bhagubhai Patel** :- The assessee obtained loan of Rs. 1cr from Shri Nareshbhai Bhagubhai Patel. The assessee submitted detail on 21.12.2016 in support of this loan transaction but the AO stated that this has been submitted at the fag end of the year. Moreover, returned income is small, therefore, genuineness & creditworthiness is not proved, hence additions were made (Page No.34 of the assessment order). During remand report proceedings, Shri Nareshbhai B. Patel was summoned and his statement was recorded u/s 131 of the Act on 30.05.2018. (Page 19 to 21 of the remand report). Shri Nareshbhai Bhagubhai Patel stated before the AO on oath that he has given loan of Rs.1 cr to the assessee. He further stated that he obtained loan from M/s DRB Ravani Developers to give loan to the assessee. Thus, the source of source has also been explained before the AO. He submitted copy of ledger account of the assessee from his books of accounts, copy of his bank statement copy of ITR filed. He also stated that the entire loan was repaid by the assessee through regular banking channel. But the AO did not find the explanation satisfactory stating that interest was not charged by the creditor & income returned of the creditor is too small, therefore, creditworthiness & genuineness has not been proved by the assessee. Assessee stated in the rejoinder that Shri Nareshbhai B. Patel has explained that he is known to the assessee and because of his personal relations, he did not charge interest. Charging of interest is not mandatory requirement to prove the genuineness of the transaction. Moreover he explained the source of his funding & stated that the amount received from M/s DRB Ravani Developers through normal banking channel has been given to the assessee. This loan amount has been fully repaid during F.Y.2015-16 through normal banking channel. No cash has been found deposited in the bank account of the creditor immediate before issuing cheque to the assessee. Returned income is not the sole criteria to decide the capacity of the creditor. Assessee having returned losses too can advance loans. If the AO had any doubt about: the source of source, he would have made necessary enquiries in this regard. Thus, the finding of the AO about the genuineness of transactions & non-creditworthiness of the creditor is not

based on any evidence which cannot be sustained. From the above facts it is clear that identity of the creditor is proved, as he appeared before the AO. The transaction was through normal banking channel & source of source has been explained to the AO. No cash was found deposited in the bank account of the creditor before issue of cheque to the assessee and the loan has been repaid entirely in next financial year. These facts prove genuineness of transactions & creditworthiness of the creditor. Thus, addition of Rs.1,00,00,000/- made by the AO are deleted.

v) **Mukeshbhai J. Bhadiadra:** - The assessee received loan of Rs.97,05,000/ during the year from Shri Mukeshbhai J. Bhadiadra. The AO stated in the assessment order that detail was filed on 21.12.2016, which is not complete. Thus summarily made additions alongwith other 14 creditors loan amount. During the remand report proceedings, Shri Mukesh J. Bhadiadra was summoned and his statement u/s 131 of the Act was recorded on 29.05.2018. He confirmed the transaction with the assessee. He said that he gave loan to the assessee, as he wanted to purchase some piece of land from the assessee. He also stated that he took loan from others and given name of those people to the AO. He produced copy of ledger account of the assessee from his books of account, copy of ITR filed & copy of his bank statement. Thus, he has proved source of source with the help of his bank account. But the AO stated that the assessee having small returned PAN & address of his creditors not given and details of land to be purchased has not submitted, thus, the transaction is not found genuine and creditworthiness is proved. This clearly raises suspicion. The assessee stated that he had opening balance of Rs.89,61,058/- from Shri Mukesh J. Bhadiadra, which has been accepted by AO, as no action u/s 148 of the Act has been initiated for the relevant assessment year. When the transaction has been accepted for one financial year, it cannot be said non-genuine from the same person without proper investigation for other financial year. During the year, the assessee paid back Rs. 20 lacs to Shri Mukeshbhai. All these transactions are through normal banking channels. The assessee took further loan of Rs.14.50 lac during FY.2014-15, immediate next financial year & Rs.76,00,000/- in FY.2018-19. All these facts were before the AO while submitting remand report. The assessee repaid Rs.31.50 lacs during FY 2018-19. These facts show that assessee is having continuous and regular financial transactions with Shri Mukesh j. Bhadiadra. The transactions have been confirmed by the creditor by appearing personally before the AO and giving statement on oath u/s 131 of the Act, the transaction are through regular banking channels and there is no cash deposit found in the bank account of the creditors immediate before issuing cheque to the assessee, the assessee has barged onus to prove identity of the creditor, genuineness of the transaction and creditworthiness of the creditor beyond doubt. The finding of the AO are based on suspicion only as stated in remand report, which cannot be sustained. Hence, the addition of Rs.97,05,000/- are **deleted.**

vi) **Pankaj Patel:-** The assessee obtained loan of Rs.50,00,000/- during the year from Shri Pankaj Patel. During the assessment proceedings, no detail about transaction was filed, as it is not discussed in the assessment order. During the remand report proceedings, the AO issued notice u/s 133(6) of the Act to Shri Pankaj Patel, Shri Pankaj Patel filed confirmation with copy of bank statement before the AO confirming the transaction with the assessee. The AO considered the transaction as non-genuine, as no interest was paid to the creditor, books of accounts are not maintained by the creditor, copy of IT return was also not submitted. The assessee stated that the loan amount has been confirmed by the creditor, copy of PAN is filed before the AO and loan was given out of Rs.75,00,000/- received by the creditor in his bank account through transfer/clearing. Thus, the assessee has proved identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. In this case, it is found that the assessee has not proved the genuineness of the transaction. The assessee failed to furnish copy of ITR filed by the creditor. The creditor does not maintain books of accounts as per section 44AD which can prove genuineness of the transactions. Moreover, the loan was taken in 2013, i.e. about 8 years ago and no repayment of loan even partly has been made to the creditor. Moreover, the creditor has not been paid any interest during all these years. With these facts, the assessee failed to prove the genuineness of the transaction, Hence, addition of Rs. 50 lakh made by the AO are confirmed.

vii) **Rakesh Jangid Prp. Of Rajla Trading:-** The assessee obtained loan of Rs. 40,00,000/- from Shri Rakesh Jangid. The assessee filed copy of PAN, ITR and bank statement during assessment proceedings. The AO stated that because of small returned income of the creditor, the transaction is not genuine. During remand report proceedings, the AO issued noticed u/s 133(6) of the Act to the creditor. Shri Rakesh Jangid submitted confirmation of the transaction with the assessee, filed copy of ITR for AY 2014-15 in which returned income shown was Rs. 9,00,830/-. His books of accounts have been audited in which loan has been shown to the assessee. In remand report, the AO stated that as no interest was charged hence, transaction was not genuine. The assessee stated that gross income as per computation of income is of Rs, 12.32 lacs of the creditor for the year under consideration. Rs. 35 lacs have been repaid during 2018 19. Keeping in view the fact that the creditor has confirmed the transaction, his books of accounts are audited, he is filing regular return of income, transaction is through normal banking channel and major part has been repaid in 2018-19. The assessee has proved identity of creditor, genuineness of the transaction and creditworthiness of the creditor. Thus, addition of Rs.40 lakh made by the AO are **deleted**.

viii) **Maheshwari Sales Prop. Smt. Pravinaben R. Shah:** The assessee obtained loan of Rs.43,00,000/- from the above named creditor. During the assessment proceedings, the assessee submitted confirmation, copy of ITR and bank statement of the creditor. The assessee explained source of source in the submission given before the AO. The AO rated that returned income of the creditor is very small and why funds were routed high the

creditor, hence, made the additions. During the remand report proceedings, the creditor was issued notice u/s 133(6) of the Act. In response to the notice, the creditor confirmed the transaction with the assessee with the help of statement and ITR filed. The AO is not satisfied for the reason that explanation of entries in the creditors account have not been explained properly. Income turned in only of Rs.195534/- & books of accounts are not maintained. With these findings, the AO stated that genuineness of the transaction and creditworthiness of the editor is not established. The assessee stated that loan has been confirmed by the creditor, who is IT assessee and filing IT return, transaction was through regular banking and credit entries in the bank account of the creditor were explained. No cash been found deposited in the bank account of the creditor immediate before issuing cheque to the assessee. Moreover, the entire loan was repaid in next FY 2014 15. Keeping in view the fact that the creditor has confirmed the transaction, creditor is income tax assessee, transaction is through regular banking channel, no cash was found deposited in the bank account of creditor immediate before issue of cheque to the assessee and entire loan has been repaid in next FY.2014-15, the additions of Rs.33 lacs made by the AO are not found sustainable. Thus, these are **deleted**.

ix) **Massimo Enterprise:-** The assessee obtained loan of Rs.30,62,800/ from the above named creditor. During remand report proceedings, notice u/s 133(6) was issued, which was replied by the partner of M/s Massimo Enterprise. The partner confirmed the transaction with the assessee. Copy of ITR & bank statement also filed before the AO. The AO did not find the confirmation satisfactory stating that the books of account are not maintained. There are several credit entries in the bank account of the creditor, no interest was charged and returned income is Nil. The assessee stated that there was opening balance of the creditor with the assessee amounting to Rs. 70 lakh which has been accepted by the AO, as no proceedings has been initiated by the AO by reopening the case of the assessee for that year. The assessee further stated that depositor is a partnership firm and advanced money against purchase of land situated at survey number 91, Plot Number 4. As the registration of sale deed was pending, the amount was shown as loan in the books of accounts. Subsequently registration was made on 24.06.2013 and the loan was taken to the sale account by passing the journal entry. The assessee filed copy of registered sale deed in which name of the creditor and assessee are mentioned. In the Sale deed, narration of the amount given to the assessee has also been mentioned. Thus, the fact stated by the assessee have been found factually correct, therefore, the addition of Rs. 30,62,800/- lakh made by the AO are **deleted**.

x) **Bhavik D. Shah:-** The assessee obtained Rs.25,00,000/- from Shri Bhavik Shah. During the assessment proceedings, the assessee filed confirmation, copy of ITR and copy of bank statement. The AO stated that creditor has small returned income and made the addition. During remand report proceedings, the AO issued notice u/s 133(6) of the Act,

which was responded by Shri Bhavik Shah confirming the transaction with the assessee. Shri Bhavik Shah submitted his copy of ITR filed and statement in support of the transaction. The AO did not find the evidence satisfactory stating creditor's income of Rs. 2.40 lacs, only no interest was charged on the loan and books of accounts are not maintained by the creditor hence it is a sham transaction. The assessee stated that the creditor has confirmed the transaction, he explained source in his books accounts, names were given to the AO or can be ascertain the bank account itself. The cash deposit of Rs.8.30 lakh was from the withdrawal on 29.10.2013 and 30.8.2013 from the same bank account. Moreover entire loan has been repaid by normal banking channel during FY 2014-15. Keeping in view of the fact narrated above that the creditor has confirmed the transaction, he is regularly assessed to Income Tax, transaction was through normal banking channel and cash deposits in the creditors account found explained, the entire loan has been repaid in t AY 2014-15, the assessee has discharged onus to prove identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. Further the finding of the AO that no interest has been charged is found factually incorrect, as the assessee had paid interest of Rs. 36,986/- for FY 2013-14, Rs. 2,28,320/- for FY 2014-15, & Rs.11,894/- for FY 2015-16, These amount have been paid through regular banking channel. Hence, the addition of Rs. 25 lakh made by the AO are **deleted**.

xi) **Shri Rameshbhai C. Patel :-** The assessee obtained loan of Rs.25,00,000/- from Shri Ramesh Patel. During the assessment proceedings, the assessee submitted confirmation, copy of PAN & ITR and bank statement of the creditor. The assessee also stated that the loan was given from the credit by transfer/clearing in the bank account creditor. The AO stated that details are submitted at the fag end of the year and amount advanced was not from the balance lying in the bank account of the creditor, thus additions were made. During the remand report proceedings, the assessee was issued summons u/s 131 of the Act and he produced himself before the AO on 31.05.2018. His statement was recorded, in which he confirmed the transaction with the assessee. He stated that he is close friend of the assessee. His returned income for the year 2014-15 was Rs.51,66,370/-. He further stated that source of loan given is withdrawal from M/s Astha Developer, where he is a partner. But the AO did not find these explanations satisfactory stating that the creditor could not provide any documentary evidence in support of withdrawal from M/s Astha developer. This finding of the AO is factually incorrect as the creditor's bank account was in front of the AO during the assessment proceedings as well as during remand report proceeding. Credit by transfer contains name of the person from whose account money is transferred. Thus, documentary evidence was very much with the AO. The assessee stated that creditor has capital balance of rupees 13.45 cr. Moreover the entire loan was the repaid in FY 2014-15 i.e. next financial year. From the discussion above, it is clear that the assessee has discharged his onus of proving identity of the creditor, genuineness of the

transaction and creditworthiness of the creditor, thus addition of Rs. 25,00,000/- made by the AO are **deleted**.

xii) **Shri Nathji Trading Prop. Rohit Kumar B. Shah:-** The assessee obtained loan of Rs. 25 lakh from the above named person. During the assessment proceedings, the assessee filed confirmation, bank account and ITR of the creditor. The assessee explained the credit entry in the bank account of the creditor credited immediate before issue of cheque to the assessee. Thus, assessee explained source of source too. But the AO did not found it satisfactory stating that income returned by the creditor is small and detail submitted at the fag end of the year, so investigation in the matter- could not be completed. During the remand report proceeding, notice u/s 133(6) was issued to the creditor. The creditor replied to the above notice & confirmed the transaction with the assessee. He submitted copy of ledger account of the assessee, bank account and copy of ITR filed. The credit entries in his bank account are through normal banking channel have been again stated from Subham Enterprise (Rs.9,50,000/-), Radhika Enterprise (Rs.9,50,000/-) and Tirupati trader (Rs.5,40,000). But the AO did not consider these satisfactory stating that returned income is only of Rs.1,95,164/-, no interest was charged and the creditor received amount only to pass it on to the assessee. I he assessee stated that he has discharged onus as the creditor has confirmed the transaction. The creditor is assessed to income tax, the transaction is through regular banking channel and no cash has been found deposited in his bank account immediate before issuing cheque to the assessee. Even the source of source has been explained through the bank account of the creditor. The assessee further stated that the entire loan has been repaid through normal banking channel during FY.2014-15. Keeping in view the fact narrated above that the creditor has confirmed the, transaction to the AO, he is assessed to income tax & filing regular returns, transaction is through regular banking channel, no cash has been found deposited in the bank account of the creditor immediate before issue of cheque to the assessee and the entire loan was repaid through normal banking channel during next FY 2014-15, the assessee has discharged his onus of proving identity, genuineness of the transaction u creditworthiness of the creditors. Thus, the addition of Rs.25,00,000/- made by the AO are **deleted**.

xiii) **Ishwarbhai L. Prajapati:-** The assessee obtained loan of Rs. 25,00,000/- from the named creditor. In the assessment order, the AO mentioned this transaction as sported one but at page number 6 (bottom para) in the order sheet reproduced by AO, it is written that bank account of the creditor was explained. The AO asked assessee to submit copies of bank account from where creditor got credit through normal banking channel before issue of cheque to the assessee. During the remand proceeding, notice u/s 133(6) was issued to the creditor which was complied with Shri Ishwarbhai confirmed the transaction with the assessee. He filed copy of his and Bank account before the AO. The AO stated that creditor has returned income of Rs.1.97 lakh only and does not

maintain books of accounts. He obtained loan from others and passed it on to the assessee. Thus genuineness and creditworthiness are not proved by the assessee. The assessee contended that the creditor has confirmed the transaction, creditor is assessed to income Tax, transaction is through regular banking channel, credit in the bank account of the creditor stands explained which is /through normal banking channel (Rs. 13 lakh from Dhaval Gem, Rs. 10 lakh from Shri Chetan Kr and Rs. 2 lakh in cash from past saving) and the entire loan has been repaid during FY 2015-16 with interest. On going through the facts above, it is found that the assessee has discharged his onus of proving the Identity of the creditor, as lie replied In the notice issued by the AO u/s 133(6) of the Act. Further the creditor is assessed to income tax and copy of ITR was filed before the AO. Genuineness of the transaction is proved as it is through regular banking channels. Creditworthiness is proved from the fact: that the assessee explained even source of source with the help of creditor's bank account. The entire loan has been repaid in FY 2015-16 along with interest. The assessee paid interest of Rs. 53260/- for FY 2013-14, Rs.2,29,780/- for FY 2014-15 and Rs. 11,830/- for FY 2015-16. Thus, The AO finding that the assessee did not pay any interest has been found factually incorrect. Thus, the addition of Rs.25 lakh made by the AO are not found justified. Hence, these are deleted.

xiv) **Mahadev Sales Corporation Prop. Smt. Ayushi B. Shah:** The assessee obtained loan of Rs.24,50,000/- from the above named creditor. During the assessment proceedings, the assessee submitted confirmation, copy of ITR and Bank statement. The assessee also explained the credit entries in the bank account credited before issuing cheque to the assessee. The AO stated that Income returned is too small and funds have been routed through these accounts, thus made the addition. During the remand report proceedings, notice u/s 133(6) of the Act: was issued, which was responded by the creditor. The creditor confirmed the transaction with the assessee & submitted copy of ITR and bank statement. The AO did not find all these satisfactory stating that income of the creditor is only of Rs.1,92,903/- and books of accounts are not maintained. The assessee stated that transaction was confirmed by the creditor who is Income Tax assessee. He explained the source of source with the help of bank account stating that credit received Rs. 20,50,000/- from Rajesh, Rs.5,00,000/- from Rani Sales Corporation and Rs. 11 lakh from Rashmi marketing through normal banking (ham id. Out of these funds, creditor issued cheques to the assessee. Thus source of source is also proved. The entire loan was repaid in FY 2014-15. Keeping in view the fact **stated** above, it is held that the assessee has discharged his onus to prove identity of the creditor as notice u/s 133(6) was directly replied to the AO. The creditor is regularly assessed to Income Tax. The genuineness is proved, as the transaction is through normal banking channel and the entire loan was repaid in next financial year. Creditworthiness is proved from the fact that there is no cash deposit found in the bank account of the assessee immediate before issue of

cheque to the assessee. Although the assessee is not required to prove source of source but he explained with the help of bank accounts of the creditors. Hence the addition of Rs.24.50 lakh made by the AO is not found justifiable, thus deleted.

xv) **Shri Khangerbhai M. Bhadiadra:** The assessee obtained loan of Rs.20,90,000/- from the above named creditor. The assessee filed confirmation, Bank assessment and during the assessment proceedings. The assessee also explained that credit entries of the bank account are explained, as these are through transfer/clearing. The AO stated that Income returned is small, hence additions were made. During the remand report proceeding, no enquiry has been made by the AO. The assessee stated that creditor is real brother, who had opening balance of Rs.2,56,61,000/- at the start of the year and the same has been accepted by the AO. Moreover, the entire loan has been repaid during FY 2014-15. From the fact narrated above, it is clear that the assessee has charged his onus to prove all three ingredient as required u/s 68 of the Act. Thus addition of Rs. 20.90 lakh made by the AO are deleted.

xvi) **Raj Enterprise Prop. Brinda J. Gaglani:** The assessee obtained loan of Rs. 19 lakh from the above named creditor. During the assessment proceedings, the assessee submitted confirmation, copy of ITR and bank statement with explanation of credit entries through transfer/clearing in the creditors account, thus, explained the source of the source too. The AO stated that Income returned by the creditor is small and why fund was routed through the creditor. During remand report proceedings, no enquiry was made from this creditor. The assessee contended that the creditor has confirmed the transaction he is assessed to Income Tax, transaction is through regular banking channel and credits in to creditors account were explained and no cash was found deposited in the creditor account immediately before issue of cheque to the assessee. The entire loan has been repaid in FY 2014-15. Thus, he discharged his onus to prove the genuineness of the transaction and creditworthiness of the creditor too. On going through the fact of the case as stated above, I inclined to agree with the assessee's contention and therefore, addition of Rs. 19 lakh made by the AO are deleted.

xvii) **Jitender Kantilal Shah:** The assessee received Rs. 18 lakh from the above name creditor. During the assessment proceeding, the assessee submitted confirmation, ITR acknowledgement and copy of the bank account of the creditor. The AO did not find satisfactory stating that the creditor has small returned income. During the remand report proceedings, the AO did not offer any comment on this. The assessee stated that Rs.7,00,000/- was deposited in the bank account of the creditor immediately before issue of cheque to the assessee and were from his past savings. The assessee stated that the creditor has confirmed the loan. The loan was through regular banking channel and it was fully repaid during FY 2014-15, therefore, addition may be deleted. All the fact of the transaction are considered in totality. The cash deposit of Rs.7,00,000/- in

*the bank account of the creditor is found and it is not commensurate to his returned income and cannot be considered from past savings. Therefore to the extent of rupees 7 lakh, the assessee is not able to prove the creditworthiness of the creditor. Thus, addition of Rs.7,00,000/- are **confirmed** and remaining addition of Rs.11 lakh are **deleted**.*

***xviii) Ambaji Trading Prop. Shri Sunil Vishwakarma :-** The assessee obtained loan of Rs.15,00,000/- from M/s Ambaji Trading. The AO stated in the assessment order that only ROI has been filed and as complete details not filed, addition were made. During the remand report proceeding, notice u/s 133(6) of the Act was issued, which was responded by the Prop. Of M/s Ambaji Trading. He filed confirmation of the loan given to the assessee (S. N. 14 at page No. 12 of remand report). The AO stated that as the creditor has returned income of only Rs. 276990/- for AY 2014-15 and no interest was charged, it is sham transaction. The assessee contended that confirmation, copy of ITR and bank account of the creditor were directly submitted before the AO by the creditor. Amount was received through normal banking channel & no cash was found deposited in the bank account of the creditor immediate before issuing cheque to the assessee and entire loan has been repaid during FY 2014-15. Interest of Rs. 22192/- @ 9% per annum was given to the creditor. Thus, the AO findings are factually incorrect to this extent. On careful consideration of the facts in totality that transaction has been confirmed by the creditor, amount was received through regular banking channel & no unusual cash deposit was found in the bank account of the creditor before issue of cheques to the assessee and entire loan has been repaid during FY 2014-15 with interest, assessee has proved identity of the creditor, genuineness of the transaction & creditworthiness of the creditor, thus, additions of Rs.15 lakh made by the AO are **deleted**.*

***xix) Adinath Traders Prop. Kavya Manji Kotak:** The assessee received Rs.15 lakh from the above named creditor. During the assessment proceedings, the assessee filed confirmation, acknowledgment of the ITR and copy of bank account of the creditor. The assessee explained the credit entries in the bank count of the creditor with the help of the bank account, as all these were through normal banking channel. But the AO did not find these satisfactory stating low income of the creditor and filing the detail at the fag end. During remand report proceedings notice u/s 133(6) of the Act was issued to the creditor, which was replied by filing confirmation of the transaction with the assessee, copy of ITR and bank account. The AO did not find all these satisfactory stating returned income of the creditor is only of Rs. 198304/-, interest was not paid and amount was received by the creditor through transfer/clearing immediately before issue of cheque to the assessee. The assessee contended that the creditor directly confirmed the transaction to the AO by filing documentary evidences, he is assessed to tax, transaction was through regular banking channel and credits in to creditors bank account are explained, which prove source of source & the entire loan was repaid during FY 2014-15, additions may be deleted. On-going through the fact*

stated above, it is found that the creditor has confirmed the transaction, it is through normal banking channel & entire loan has been repaid. The assessee has discharged onus to prove identity of the creditor, genuineness of the transaction & creditworthiness of the creditor, hence, addition of Rs. 15 lakh made by the AO are **deleted**.

xx) **Shri Bharatbhai Tibadiya :-** The assessee obtained loan of Rs. 12 lakh from Shri Bharatbhai Tibadiya. During the assessment proceedings, the AO stated that complete detail was not filed, hence addition were made. During remand report proceedings, the creditor was issued notice u/s 133(6) of the Act, which was replied by him confirming the transaction with the assessee. The creditor had returned income of Rs. 216320/- for AY 2014-15. Copy of bank statement of the creditor was not filed before the AO during the assessment proceedings in spite of specific mention by the AO on the order⁴ sheet. It is not filed even during the remand report proceedings and even during appellate proceedings. The AO did not find the explanation satisfactory stating that returned income is small, copy of creditors bank account not filed and interest was not charged. The assessee stated that transaction has been confirmed, entire loan was repaid during next FY 2014-15, therefore, addition may be deleted. The contention of the assessee are not found acceptable for the reason that during the assessment proceedings, the AO specifically asked about, the bank account of the creditor & these facts have been mentioned on the order sheet reproduced in the assessment order. Even during the remand report proceedings, copy of bank account of the creditor was not produced. During the appeal proceedings, copy of the said bank account has not been produced. Creditworthiness of the creditor can only be judged by examining bank account of the creditor. In this case, the creditworthiness of the creditor has not been proved by the assessee. Thus, addition of Rs. 12 lakh made by the AO are **confirmed**.

xxii) **Smt. Kankalat Poodhwala :-** The assessee obtained loan of Rs. 10.80 lakh from the above named creditor. The AO has considered loan from this creditor as unreported loan in the assessment order. During remand report proceedings, the AO stated that confirmation & IT acknowledgement was filed but no bank account copy was filed. Thus, the assessee did not discharge onus fully. The assessee contended that he had opening balance of Rs.2,17,24,250/- from the above named creditor & during the year, only Rs.10.80 lakh has been obtained as new credit through regular banking channel. Therefore, a editions may be deleted. Facts of the issue has been considered in totality. The assessee had opening balance of Rs.2,17,24,250/- at the start of the FY and obtained further loan of Rs. 10.80 in the instalment (i.e. Rs.7.30 lakh & Rs.3.50.) But no payment has been made during the year. No interest has been credited or paid to e creditor. The loan was taken in FY 2013-14 & earlier year, but not a single rupee has been repaid by the assessee till date i.e. even after more than 8 years. Moreover, the assessee failed to file copy of the bank account of the creditor. All these facts clearly prove that the assessee failed to discharge onus of proving genuineness of the

transaction & creditworthiness of the creditor. These additions of Rs.10.80 lakh made by the AO are **confirmed**.

xxii) **Raiesh J. Doodhwala** :- The assessee obtained loan of Rs.10,70,000/- from the above named creditor. The AO has considered loan from this creditor as unreported loan in the assessment order. During remand report proceedings, the AO stated that confirmation & IT acknowledgement was filed but no bank account copy was filed. Thus, the assessee did not discharge onus fully. The assessee contended that he had opening balance of Rs.1,01,25,000/- from the above creditor & during the year, only Rs.10,70,000/- has been obtained as new credit through regular banking channel. Therefore, additions may be deleted. Fact of the issue has been considered in totality. The assessee had opening balance of Rs.1,01,25,000/- at the start of the FY and obtained further loan of Rs.10.70 lakh during the year. But no repayment has been made during the year. No interest has been credited or paid to the creditor. The loan was taken in FY 2013-14 & earlier year, but not a single rupee has been repaid by the assessee till date i.e. even after more than 8 years. Moreover, the assessee failed to file copy of the bank account of the creditor. All these facts clearly prove that the assessee failed to discharge onus of proving genuineness of the transaction & creditworthiness of the creditor. These additions of Rs.10.70 lakh made by the AO are **confirmed**.

xxiii) **Shri Dhaval Pankaj Patel**: During the assessment proceedings, the assessee submitted bank account but it was only showing debit entry for the amount given to the assessee. The assessee did not produce copy of bank account showing credit entry to the creditors account. It was specifically pointed to the AR of the assessee as noted on order sheet and the same has been reproduced in the assessment order. During the remand report proceedings, copy of bank account was submitted before the AO in response to the notice issued u/s 133(6) of the Act. The creditor confirmed the transaction with the assessee to the AO. The creditor filed copy of IIR showing income of Rs. 260320/-. The AO stated that return income is small and no interest was charged by the creditor this transaction is sham. The assessee contended that the creditor has confirmed the transaction directly to the AO by filing all document including copy of the bank account & AO is satisfied with the transaction shown in the bank account. Transactions are through regular banking channel. The AO is factually incorrect in stating that no interest was paid by the assessee, as the assessee had paid Rs. 14975/ for FY.2013 14, Rs. 91328/- for AY. 2014-15 & Rs. 7185/- for FY 2015-16 as interest expenditure through normal banking channel alongwith the principal amount which was entirely paid during FY 2015-16, Thus, addition may be deleted. Ongoing through the facts stated above that the creditor confirmed the transaction, he is assessed to tax, transaction is through normal banking channel & no cash was found deposited in the bank account of the creditor immediate before issue of cheque to the assessee and the entire loan amount has been repaid during FY 2015-16 with interest, the addition made by the AO are not found justified, hence addition of Rs. 10 lakh are **deleted**.

xxiv) **Manishbhai Kalidas Desai:** The assessee obtained loan of Rs. 10 lakh from the above named creditor. The AO find the return income of the creditor small and made the additions. During the remand report proceedings, the creditor replied to the notice issued u/s 133(6) of the Act and confirmed the transaction with the assessee. He produced copy of ITR & copy of bank statement but the AO did not find all these satisfactory stating that returned income is only Rs.2,35,714/-, the creditor did not get interest & not maintaining books of accounts. The assessee contended that the creditor confirmed the transaction to the AO in response to the notice issued u/s 133(6), copy of ITR & bank statement was filed before the AO, transaction is through regular banking channel, no cash has been found deposited in the bank account of the creditor before issue of cheque to the assessee and the entire loan alongwith interest has been repaid during FY 2015-16. The AO's finding that no interest was paid by the assessee is factually incorrect. The assessee paid interest of Rs. 51781/- for FY 2013-14, Rs. 94638/ for FY 2014-15 and Rs.62301/- for FY 2015-16 alongwith principal amount. Therefore addition made by the AO may be deleted. Ongoing through the facts mentioned above, I inclined to agree with the contentions of the assessee, thus additions of Rs. 10 lakh are **deleted**.

xxv) **Radhika Enterprise & Rudhik Enterprise Prop. Sanjay G. Shah:** obtained loan of Rs.350000/- & 1000000/- respectively from the two concerns. During the assessment proceedings, documents submitted by the assessee were found insufficient by the AO stating income of the creditor is small and document submitted at the fag end. During the remand report proceedings, notice u/s 133(6) of the Act was issued which was complied. The creditor confirmed by transaction. Copy of the ITR & bank account was submitted before the AO but AO stated that income returned is only Rs. 179304/- and interest has not been paid, hence transaction was not genuine. The assessee contended that creditor has confirmed the transaction before the AO in response to the notice issued u/s 133(6) of the Act. The creditor is assessed to tax. Transaction was through normal banking channel & AO did not give any adverse comments about the credit in the bank account of the creditor. The entire loan has been repaid during FY 2014-15. The assessee filed all documents in support of the transaction. Ongoing through the facts of the issue that the creditor has confirmed the transaction before the AO during the direct enquiry made by the AO, he is assessed to tax, transaction is through regular banking channel, cash was not found deposited in the bank account of creditor immediate before issue of cheque to the assessee and entire loan has been repaid in FY 2014-15, the addition made by the AO are not found justified, as the assessee has discharged his onus to prove identity of the creditor, genuineness of the transaction & creditworthiness of the creditor. Thus, addition of Rs.1350000/- are deleted.

xxvi) **Vardhman International Prop. Shri Dhaval D. Patel :-** The assessee obtained Rs. 10 lakh from the above named creditor. During the assessment proceedings, the assessee submitted confirmation, ITR and

bank statement the creditor. The AO stated that returned income is small, hence additions were made. During the remand report proceedings, no enquiry was made from the above creditor by the AO. The assessee stated that he filed confirmation, ITR & bank statement. Thus discharged onus as required under section 68 of the Act. But the assessee's explanation was not found satisfactory for the reason that i) there is cash deposit of Rs. 9.50 lakh in the bank account of the creditor immediately before issue of cheque to the assessee. The assessee stated that it is from his day to day cash book, but it cannot be believed that reason having annual returned income of Rs. 2.91 only can deposit cash of Rs. 9.50 within few days. Thus creditworthiness of the creditor is not proved by the assessee, li) the loan was received in 2013 but the assessee neither paid any interest on this loan nor any repayment has been made to the creditor for a period of more than 8 years. This prove that the transaction is not genuine. Keeping in view the facts above, additions of Rs.10 lakh made by the AO are **confirmed.**

xxvii) **Shri Himmatbhai D Savaliya :-** The assessee obtained Rs. 8 lakh loan from Himmatbhai D. Savaliya. During the assessment proceedings, bank statement of creditor was not filed before the AO, hence AO made the additions. During remand report proceedings, the creditor filed confirmation, copy of ITR and bank statement before the AO, in response to the notice issued u/s 133(6) of the Act. The AO stated that the creditor having returned income of Rs. 2.16 lakh only, no interest has received by the creditor and he is not liable to maintain books of accounts, thus additions were made. The assessee contended that confirmation, copy of ITR & bank account was directly filed before the AO by the creditor. Transaction is through regular banking channel and i (ash deposit was found in creditors account immediately before issue cheque to the assessee. Moreover, the entire loan was repaid in FY.2015-16 alongwith interest of Rs.69904 for FY.2013-14, Rs.87282/- for FY.2014-15 and Rs.54482/- for FY 2015-16. The AOs findings stating non-charging of interest is factually incorrect. Fact of the issue has been considered in totality & I agree with the contention of the assessee that he discharged onus to prove identity of the creditor genuineness of the transaction by payment of entire loan alongwith interest and creditworthiness of the creditor as no cash was found deposited in the bank account of the creditor before issue cheque to the assessee. Therefore, additions of Rs. 9 lakh made by the AO are deleted.

xxviii) **Namankumar A. Patel :-** The assessee obtained loan of Rs. 9 lakh from Shri Naman A. Patel. During the assessment proceedings, the AO made the additions stating creditor having small income. During the remand report proceedings, the creditor filed confirmation, ITR & bank statement before the AO in response to notice issued u/s 133(6) of the Act. The creditor's returned income for AY 2014-15 was Rs. 8.91 lakh. The AO stated that creditor is not maintaining books of account and interest was not charged, hence, additions may be sustained. The assessee contended that the creditor has confirmed the transaction before the AO by filing confirmation, ITR & bank statement in response to notice u/s 133(6) of

the Act. The creditor has returned income of Rs. 10.09 cannot be said as small. The assessee also stated that he had opening balance of Rs. 10 lakh with the creditor, which AO did not disturb. During the FY 20.13 14, the assessee repaid Rs. 5.80 lakh to the creditor. Rs. 10 lakh were further repaid on 18.01.2018. This loan has been partly repaid and only Rs. 3.20 lakh remain closing balance as on 31.03.2018. Transaction are through regular banking channel and in the bank account of the creditor before issue of cheque to the assessee, no cash was found deposited. Thus, he discharged onus as required u/s 68 of the Act. On considering the above facts in totality, it is found that the assessee has discharged onus of proving identity, genuineness of the transaction & creditworthiness of the creditor, therefore, addition of Rs, 9 lakh made by the AO are **deleted**.

xxix) The assessee has obtained loan from the following persons during the year.

Sr.. No.	Name	Amount (Rs.)
A	Shri Babulal C. Sheth	700000
B	Shri Kistmal Ali Saikh	600000
C	V.D. Internaitonal Prop Ms. Ritaben J. Gaglani	550000
D	Arvind S.Sanghavi	500000
E	Ashok Enterprise Prop Prakash Chandan Modi	450000
F	Jagdish Malabhai Bharad	70000
G	Kanaiyabhai Malabhai Bharwad	40000
H	Amar Enterprise Prop. Jayantibhai R. Zaveri	950000
I	Madhuben M. Bharwad	310000
J	Chayanbhai H. Sindhavi	45000
K	Bavalbhai H. Sindhav	30000
L	Haribhai M.Sindhav	45000
M	Smt. Manuben Ranchod bhai	45000
N	Rameshbhai M. Bharwad	45000
O	Bhagwan Chitte	400000
P	Mukeshbhai Chitte	500000
Q	Smt. Suryaben Thakorbbhai	400000
R	Dineshbhai Chitte	400000
S	Lalbbhai Rudabbhai Patel	1000000
Total		70,80,000/-

The assessee submitted confirmation, copy of ITR & bank statement of all these persons before the AO. All these transactions are through regular banking channels and no cash was found deposited immediately before issue of cheque to the assessee in the bank account of the creditor. Moreover, the assessee had repaid all these loan entirely Di partly in subsequent financial years. Some of the creditors have opening balance, which have not been disturbed by the AO. Keeping in view the above facts, it is held that the assessee has discharged onus to prove identity of the creditor, genuineness of the transaction & creditworthiness of the creditors. Thus additions of Rs.70.80 lakh made by the AO, considering loan from these persons as non-genuine are **deleted**.

xxx) The assessee also obtained loan from the following persons during the year:

Sr. No.	Name	Amount(Rs.)
A	Shri Govindbhai V Kasotia	2710000
B	Ghanshyam H. Dodiya	2240000
C	Haresh P. Somaiya	2000000

D	Rajesh Natwarlal	1600000
E	Ravjibhai Dhanani	1500000
F	Kartik Tex	1500000
G	Rita Tex	1500000
H	Smt. Shyamaben	750000
I	Smt. Baluben V. Solar	725000
J	Ganpatbhai	500000
K	Mithabhai A. Chauhan	50000
L	Mashribhai S. Patel	440000
M	Chetanbhai	400000
N	Karsan bhai V Barad	300000
O	Jai corporation	2000000
	Total	1,86,65,000/-

In respect of the above named creditors, the assessee failed to submit confirmation from the creditors, their ITR & bank statement. Thus, assessee failed to discharge onus of providing identity of creditor, genuineness of the transaction & creditworthiness of the creditors. Hence, additions of Rs.1,86,65,000/- made by the AO considering loan from the above person as non-genuine are confirmed.

xxxi) The assessee obtained loan from the following persons.

Sr. No.	Name	Amount
A	Ajay Bharat Mehta	900000
B	Arvind Shartlal Shah	625000
C	Mansukhbhai Jain	500000

D	Nirav Naresh Mehra	1700000
F	Ramniklal Manilal Shah	1000000
	Total	47,25,000/-

The assessee submitted confirmation, ITR and bank statement to support these transactions. But it is found that the assessee neither paid any interest to these creditors nor repaid loan entirely or partly during the period of more than 8 years. Because of this fact, it is clear that these transactions are held as non-genuine. Thus, the assessee failed to discharge onus to prove genuineness of these transactions. Hence, the additions of Rs.47,25,000/- made by the AO considering loan from these creditors as non-genuine are confirmed.

xxxii) The assessee also obtained loan from following person:

Sr. No.	Name	Amount
A	Amrutbhai N. Luhar	615000
B	Ashvin Enterprise	1000000
C	Bharat V. Sanghavi	500000
D	Hirabhai Prajapati	1200000
E	Varsha B. Singhavi	500000
F	Viresh Kantilal Shah	500000
G	Rinkesh Prakash Modi	900000
H	Mili Ankit Shah	600000
I	Geetaben K. Jhaveri	400000
J	Hasmukhbhai Lalubhai Patel	1750000
K	Balvantbhai Lalubhai Patel	1750000
Total		97,15,000/-

The assessee filed confirmation, ITR and bank statement of above named creditors before the AO. These transactions are through normal banking channels and cash was not found deposited in the bank account of the creditors immediate before issue of cheque to the assessee. In the case of Shri Himmatbhai Lalubhai Patel (Rs.17.80 lakh) & Shri Balvantbhai Lalubhai Patel (Rs.17.50 lakh), the assessee have opening balance of Rs. 63 lakh & 1.20 cr. respectively, which was not disturbed by the AO. In respect of other creditors, entire loan has been repaid in next financial years through regular banking channel. With these facts it is held that the assessee has discharged onus to prove identity of the creditors, genuineness of the transaction & creditworthiness of the creditors, this additions of Rs. 97,15,000/- lakh by the AO considering loan from the these creditors as non-genuine are deleted.

41. Therefore, Id CIT(A) deleted the addition of various parties to the tune of Rs.13,67,52,800/- and confirmed the additions of various parties to the tune of Rs.3,34,40,000/-. The Revenue is in appeal

before us against the deletion of addition of Rs.13,67,52,800/- and Assessee is in appeal before us against addition of Rs.3,34,40,000/- sustained by Id CIT(A).

42. Learned DR for the Revenue argued before us that Id CIT(A) deleted the addition of various parties to the tune of Rs.13,67,52,800/- without looking into the genuineness and creditworthiness of the parties, hence addition made by the assessing officer should be sustained. On the other hand, Id Counsel for the assessee submitted that assessee has submitted bank statements, Pan Number, name and address of the parties, Income Tax return of the parties, therefore balance addition sustained by Id CIT(A) of Rs.3,34,40,000/- may be deleted. Besides, Id Counsel fairly agreed that assessee submitted additional evidences for the parties, where the amount involved is to the extent of Rs.1,86,65,000/-, therefore, the same may be remitted back to the file of the assessing officer for his examination and adjudication in accordance with law.

43. We have heard both the parties. We note that following additions made by the assessing officer (AO) considering loan taken from the following creditors as non-genuine, were deleted by Id CIT(A), as the assessee has discharged onus to prove identify of the creditors, genuineness of the transactions and creditworthiness of the creditors.

Sr. no.	Name of the creditor	Amounts (Rs.)
1	S/Shr. Manharbhai C. Patel	37500000/-
2	Jigar B. Shah Prop of Jigar Tex	16800000/-
3	Balvantbhai D. Patel	10000000/-
4	Nareshbhai Bhagubhai Patel	10000000/-
5	Mukeshbhai J. Bhadiadra	9705000/-
6	Rakesh Jangid Rajla Trading	4000000/-
7	Maheshbhai Sales Prop. Smt. Pravinaben P. Shah	3300000/-

8	Massimmo Enterprise	3062800/-
9	Bhavik D. Shah	2500000/-
10	Rameshbhai C Patel	2500000/-
11	Shri Nathji Trading Prop Rohit kumar B. Shah	2500000/-
12	Ishwarbhai L. Prajapati	2500000/-
13	Mahadev Sales Corporation Prop. Smt. Ayushi B. Shah	2450000/-
14	Khangerbhai M. Bhadiadra	2090000/-
15	Raj Enterprise Prop. Brinda J. Gaglani	1900000/-
16	Jitendra Kantilal Shah (Partty)	1100000/-
17	Amaji Trading Prop. Sunil Vishva Karma	1500000/-
18	Adinath Traders Prop. Kavya Manji Kotak	1500000/-
19	Dhaval Pankaj Patel	1000000/-
20	Manishbhai Kalidas Desai	1000000/-
21	Radhika Enterprise & Rudhik Enterprise Prop. Sanjay G. shah	1350000/-
22	Himatbhai D. Savliya	800000/-
23	Naman Kumar A. Patel	900000/-
24	Creditors mentioned in(xxix)above	7080000/-
25	Creditors Mentions in (xxxii) above	9715000/-
	Total	13,67,52,800

44. Therefore, we note that total amount of Rs.13,67,52,800/- considered by AO as non-genuine loan, were deleted by Id CIT(A), for the reasons mentioned against each name in the findings of Id CIT(A), which we have reproduced in above paras, of this order.

Further, the deletions of these additions have been found covered by the following binding judgment of the Hon'ble Jurisdictional High Court of Gujarat, Ahmedabad in the following case laws:

- i) *CIT V/s Rohini Builders 256 ITR 360*
- ii) *CIT V/s Ranchodbhai Jivabhai Nakhare 208 Taxmann 35 (Guj)*
- iii) *CIT V/s Pankaj Enka in ITA No. 967 (215 dated 05.01.2016)*
- iv) *PCIT-1 v/s Ridhi Sidhi Corporation in ITA No. 69 of 2018 dated 14.02.2018*

45. Therefore, considering the facts of the assessee's case and case law relied on by the Id CIT(A), we note that Id CIT(A) has passed reasoned and speaking order, therefore we confirm the findings of Id CIT(A).

46. However, we note that Id CIT(A) has confirmed the addition in respect of following loans:

Sr. no	Name	Amount (Rs.)
1	Pankaj Patel	5000000/-
2	Jitendra Kantilal Shah (partly)	700000/-
3	Bharatbhai Tibadiya	1200000/-
4	Smt, Kamalelata Doodhwala	1080000/-
5	Rajesh J. Doodhwala	1070000
6	Vardhman International Prop. Dhaval D. Patel	10000000/-
7	Creditors Mentions in (xxx) above	18665000/-
8	Creditors mentioned in (xxxi) above	4725000/-
	Total	3,34,40,000/-

47. The Ld. Counsel argued that about group – 1 of unsecured loans to the extent of Rs.1,00,50,000/-, the assessee has filed the evidences and documents. The evidences and documents so filed, are at part with the documents and evidences filed in case of other

unsecured loans, therefore, the amount of Rs.1,00,50,000/- should be deleted. The Ld. Counsel further stated that in case of unsecured loans relating to group-2, the amount involved is Rs.47,25,000/-. The assessee has filed same documents and evidences which were filed in case of other unsecured loans, therefore the addition to the extent of Rs.47,25,000/- may be deleted. We find merit in the submission of ld Counsel therefore we delete additions of Rs.1,00,50,000/- and Rs.47,25,000/- respectively, as stated above. However, Ld. Counsel also furnished the additional evidences in respect of group-3 unsecured loans to the extent of Rs.1,86,65,000/-. Since, these are the additional evidences filed before the Tribunal first time and these have not been examined by the Assessing Officer, hence we are of the view that these evidences should be remitted back to the file of Assessing Officer for his examination. Therefore, out of total addition of Rs.3,34,40,000/- sustained by ld CIT(A), we remit the various creditors mentioned in para (xxxi) of ld CIT(A) order, at Rs.1,86,65,000/- to the file of the assessing officer for his examination and to adjudicate the issue in accordance with law and balance addition of Rs.1,47,75,000/- (Rs.3,34,40,000- Rs.1,86,65,000) is hereby deleted. Thus, ground no.1 raised by the assessee in ITA No.118/SRT/ 2021, is partly allowed in above terms.

48. Coming to summarized ground No.(iii) of Revenue, the ld DR for the Revenue argued that CIT(A) has erred in deleting the addition of Rs.24,27,140/- made by the Assessing Officer on account of unexplained claim of agricultural income without appreciating the fact that the assessee has not carried out any agricultural activities on his own and also failed to furnish evidences to substantiate receipt of agricultural income, therefore, ld DR contended that addition made by

the assessing officer may be confirmed. On the other hand, Id Counsel for the assessee defended the order passed by the Id CIT(A).

49. We have heard both the parties. We note that this ground of appeal is against the addition of Rs.24,27,410/ made by the AO considering agricultural income as bogus. Brief facts of the issue are that during the assessment proceedings, assessing officer (AO) sought detail from the assessee, about the agricultural activities and income generated during the course of assessment proceedings. The assessee submitted before AO the part details, which the AO did not find satisfactory and therefore made the addition.

50. During the appellate proceedings, the Id CIT(A) sought remand report. During the remand report proceedings, the assessee filed copies of land holding documents, profit and loss account of agricultural activities and contract with the other persons, who do agricultural activities on the land owned by the assessee. However, AO did not find these documents satisfactory. The assessee contended before Id CIT(A) that he is a farmer and owning agricultural lands for years, he has returned agricultural income for past several years and the same has been accepted by the department. He filed documents i.e. 7/12 and 8A which are the proof of land holding and crop cultivated on his lands. The assessee filed copy of contracts entered with the contractors, who actually do agricultural activities and make payment to the assessee as agreed in the contract. The Id CIT(A) noted that assessee filed copy of 7/12 and 8A, which proved that he is an agriculturist. The assessee submitted copies of contracts entered into with two persons for cultivating the land and amount to be received by the assessee is mentioned in these contracts. The assessee filed copies

of profit & loss account of agricultural activities in which gross income of Rs.31,45,680/- was shown. After debiting expenditure, net income of Rs.24,27,410/- is shown, which is reasonable. The assessee returned agriculture income is Rs.31,55,500/- for AY.2012-13, and Rs.30,65,650/- for AY.211-12 and different amount in earlier years too, which has been accepted by the department. Moreover, the Id CIT(A) noted that assessee was subjected to search on 27.12.2012 and assessment of 6 years was made u/s 153A of the Act. During the course of search, no evidence was found which shows that the assessee is inflating the agricultural income, reopening in view the above documents, the addition of Rs. 24,27,410/- made by the AO was not found justified by Id CIT(A), hence, Id CIT(A) deleted the addition. We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

51. In the result, ground no.4 raised by the Revenue in ITA No.121/SRT/2021 for AY.2014-15, is dismissed.

52. Coming to ground no.2 raised by the assessee in ITA No.118/SRT/2021 for AY.2014-15, (vide summarized ground no.-iv), wherein the Id. CIT(A) has confirmed the action of Assessing Officer in making disallowance of Rs.1,01,41,034/- u/s 54B of the I.T. Act, 1961.

53. Succinct facts qua the issue are that during the assessment proceedings, the assessing officer noted that assessee had claimed exemption of Rs.1,01,41,034/- u/s 54B of the Act. The assessee

claimed such exemption on sale of Sarasana-347 land, and assessee earned capital gain and same was claimed as exempted u/s 54B of the Act, as the assessee purchased another agricultural land. The AO noted that assessee had filed only part details and the assessee could not file detail of agricultural activities carried out by him, as required u/s 54B of the Act, hence the AO disallowed the exemption made the addition of Rs.1,01,41,034/-.

54. On appeal, Id CIT(A) has confirmed the action of the assessing officer. Aggrieved, the assessee is in further appeal before us.

55. Learned Counsel for the assessee, argued that assessee has claimed exemption u/s 54B of the Act, at Rs.1,01,41,034/-. The said exemption is claimed from the capital gain accrued to the assessee on the Sarsana-347 land. The land was purchased by the assessee on 03.02.2010 of Rs.10,36,466/-. The said land was sold on 27-12-2013 with consideration of Rs.1,11,77,500/-. The Id Counsel argued that assessee sold agricultural land which was used for agricultural activities during previous two years. The assessee filed copy of 7/12 & 8A of the land sold, which prove that agricultural activities were carried out. The Id Counsel further stated that assessee is regularly showing agricultural income for several years in the income tax returns filed and the same was accepted by the department even in the assessment under passed u/s 153A of the Act after search was conducted upon assessee on 27.12.2012. Thus, assessee has satisfied the condition prescribed u/s 54B of the Act, therefore exemption should be granted to the assessee u/s 54B of the Act.

56. On the other hand, the Ld. DR for the Revenue, argued that assessee submitted the sale deed of the property sold and purchased, however, no details in relation to agricultural activity being carried out on that land sold, are submitted by the assessee. The assessee simply submitted the computation of income showing the agricultural income. Thus, the assessee is not eligible for claiming exemption u/s 54B of the IT Act.

57. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that Id CIT(A) has himself admitted that assessee is owning agricultural land which was used for agricultural purpose during past two years before the date of transfer. Ongoing through the facts of the case, the assessee's contentions have been found factually correct that assessee is owning agricultural land which was used for agricultural purpose during past 2 years before the date of transfer, as seen from 7/12 and 8A form, return of income filed by the assessee and assessment made by the AO for various assessment years u/s 153A of the Act, after search was conducted upon the assessee, on 27.12.2012. Thus, the assessee has satisfied the conditions prescribed about the land sold, despite this fact Id CIT(A) denied exemption under section 54B of the Act. We note that assessee is regularly showing agricultural income for several years in the income tax returns filed and the same was accepted by the department even in the assessment under passed u/s 153A of the Act after search was conducted upon assessee on 27.12.2012. Therefore, we note that assessee has satisfied the condition prescribed u/s 54B of the Act, therefore exemption should be granted to the assessee u/s 54B of the Act, hence, we allow exemption under section 54B of the Act.

58. In the result, ground no.2 raised by the assessee in ITA No.118/SRT/2021 for AY.2014-15, is allowed.

59. In the combined result, appeal filed by the Revenue in IT(SS)A Nos.23 & 24/SRT/2021 for AY.2012-13 & 2013-14 are dismissed, appeal filed by the Assessee in IT(SS)A No.90/SRT/2022 for AY.2014-15 is allowed, whereas appeals filed by the assessee in ITA Nos.118 & Revenue in 121/SRT/2021 are partly allowed in above terms.

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

Order is pronounced on 27/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 27/12/2023

SAMANTA

Copy of the Order forwarded to

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

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat