

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

IT(SS)A No. 63 & 64/SRT/2023 (AY: 2016-17 and 2019-20)

(Physical Hearing)

D.C.I.T., Central Circle-4, Surat.	Vs.	Shree Kuberji Textile Deck, 2 nd Floor, Shree Kuberji Corporate House, Begumpura, Nr. Khndaa Kuva Road, Surat-395002. PAN No. ACSFS 4939 A
Appellant/ Revenue		Respondent/ Assessee

ITA No. 223/SRT/2023 (AY: 2020-21)

D.C.I.T., Central Circle-4, Surat.	Vs.	Shree Kuberji Textile Deck, 2 nd Floor, Shree Kuberji Corporate House, Begumpura, Nr. Khndaa Kuva Road, Surat-395002. PAN No. ACSFS 4939 A
Appellant/Revenue		Respondent/Assessee

Department represented by	Shri Ashish Pophare, CIT-DR
Assessee represented by	Shri Kiran K. Shah, C.A.
Date of Institutions of appeals	31/03/2023
Date of hearing	23/11/2023
Date of pronouncement	29/12/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. All these three appeals by the revenue are directed against the separate orders of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A) dated 02/01/2023 and 03/01/2023 for the Assessment years (AY) 2016-17, 2019-20 and 2021-12 respectively. As all these appeals relates to same assessee, certain facts in all these years

are common, therefore, with the consent of parties all these appeals were clubbed, heard together and are being decided by this consolidated order to avoid the conflicting decision. For appreciation of facts, the appeal for the A.Y. 2016-17 in IT(SS)A No. 63/Srt/2023 is treated as a "lead case". In this appeal, the Revenue has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.38,04,56,157/- u/s 69B of the I.T. Act in respect of 'On Money¹ payment of purchases of land at Block No.265, Kumbharia despite the facts that addition has been made on the basis of incriminating details/document recovered during the search proceedings.*
- 2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.38,04,56,157/- u/s 69B of the I.T. Act observing that no details of the person, details of land like survey no., block no., plot No. were mentioned on the paper despite the facts that on the loose paper the rate and area of land was mentioned and the area of the land was tallied with area of land of Block No. 265, Kumbharia, Surat which was purchased by the assessee.*
- 3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.38,04,56,157/- u/s 69B of the I.T. Act observing that the loose paper found is not in the handwriting of the appellant despite the facts that assessee is a firm and further observing that the loose paper is not found in the premises of the appellant despite the fact that the documents were found from the premises of Shri Shanker Uttamchandani at Kuberji Corporate House, Begampura, Sural: and Shri Shanker Uttamchandani and his family members are partners in the firms of Kuberji Group and Shri Shanker Uttamchandani is a main person of Shri Kuberji Group.*
- 4. In addition to ground No. 1, 2 & 3, on the facts and in the circumstances of the case and in law, the CIT(A) has granted relief dehorse provisions of section 292C of the Assessee.*
- 5. Without prejudice to and in addition to the grounds No. 1, 2, 3 & 4 on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-4 ought to have upheld the order of the Assessing Officer.*
7. *It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent."*

2. Brief facts of the case are that the assessee filed its return of income for A.Y. 2016-17 on 26/10/2016 declaring NIL income. A search and seizure action was carried out in case of M/s Kuberji Group of Surat on 06/02/2020. The assessee is one of the entity, therefore, covered in the said search. At the time of search action, various incriminating evidences were found and seized. Consequent upon, case of assessee group was centralized. Notice under Section 153A of the Income Tax Act, 1961 (in short, the Act dated 15/04/2021 was issued to the assessee to file return of income for various assessment years. In response to said notice, the assessee filed return of income on 20/04/2021 declaring NIL income. During the assessment proceedings, the Assessing Officer noted that in the course of search action in the office of Shri Shankar N Uttamchandani at Kuberji Corporate House, Begumpura, Ring Road, Surat, a paper containing certain details were seized as Annexure A/4, which contains certain incriminating evidence. The assessing officer scanned the said paper on page No. 3 of assessment order. The Assessing Officer on perusal of such details of page No. 4 of Annexure A/4, was of the view that it contains the detail of plot admeasuring 6565 square meter and 7852 square yard and rate is mentioned as Rs. 51335/- per square yard. The Assessing Officer was of the view that the said area mentioned in

the seized paper is matching with Block No. 265 of Kumbhariya, Surat which was purchased by assessee from Shri Rajiv Babubhai Kheni on 11/11/2015 for a consideration of Rs. 2.26 crores. As per the details mentioned on the seized material, total consideration of land under reference was worked out by the assessing Officer at Rs. 40,30,82,420/- . The assessee has shown consideration on registered document of Rs. 2.26 crores only, therefore, the Assessing Officer was of the view that the assessee made a payment of on money of Rs. 38.04 crores (40,30,82,420 – 2,26,00,000). On the basis of such observation, the Assessing Officer issued show cause notice to the assessee.

3. The assessee filed reply of the show cause notice. The contents of reply of assessee is recorded in para 6.2 of assessment order. In the reply, the assessee after referring the contents of seized paper, explained that the said image does not show any particular plot number and area. It appears that it is some rough working. There is no date on it. There is no details of any buyer or seller or details of payment. The assessee also explained that there are different estimate for 40,31,00,000/- and 34,56,00,000/- and contended that it appears that somebody may have estimated for some other purpose. Shri Shankar N Uttamchandani is not the partner of Kuberji Textile. No evidence was found for unaccounted payment for purchase of plot No. 265 at Kumbhariya, Surat. The assessee also stated the land was purchased from Rajubhai B Kheni on

11/11/2015 for a consideration of Rs. 2.26 crores which was duly accounted. The assessee prayed that no addition is called for in the block assessment and such paper is a dump paper and found from the third party. In without prejudice contention, the assessee submitted that they have disclosed Rs.11.00 crores in IDS-2016 on account of project Kuberji Textile Deck. Considering the nature of business where some time on-money booking amount was received and on money expenditure was incurred for the project, the assessee has disclosed net income of the said project. So no addition ought to be made for any expenditure for the project as net income is already disclosed. The explanation offered by assessee was not accepted by the Assessing Officer. The Assessing Officer made addition of Rs. 38.40 crores by taking a view that the images were found at the premises of Shri Shankar N Uttamchandani who is partner for some of the firm of Kuberji Project and rate of land written in front of area is clearly matching with the area of land at block No. 265. The Assessing Officer made addition under Section 69B and taxed the same under Section 115BBE of the Act.

4. Aggrieved by additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions as recorded in para 6.1 of order of Id. CIT(A). The assessee in its submission, submitted that the provisions of Section 132(4A)/292(C) of the Act is not applicable in respect of loose

paper found from third party. The Assessing officer estimated the value of land at survey No. 265, Kumbhariya by applying rate @ of Rs. 51533/- per square yard. On the loose paper, neither the block number nor the name of firm is mentioned, it should not be assumed pertaining to the said block. The said paper is a dump paper for the reasons that it does not contain any date, details, name of buyer, said paper is a loose paper, is not signed by any person. No details of any receipt or payment is mentioned. It does not contain block number, not supported by statement of any person. The assessee has purchased only 3282 square meter. Whereas the area of land mentioned in seized paper was 6565 square meter. The assessee further explained that on verification of property Nakal card, it is seen that survey No. 298, 299/1, 300/1-A, 302, Block 265, TP No. 35 (Kumbharia-Saroli-Saniya-Hemad-Devadh), FP No. 214/1, 214/2 Paiki FP No. 214/2 whose total area of final plot has 6564 Paiki 3282 square meter non-agricultural open land which is adjoining to east side of Block No. 266. The assessee on such fact, submitted that in absence of such details, the addition is out of presumption. The assessee further submitted that on the basis of some loose paper, the addition of Rs. 34.56 crore was made in respect of some other detail in case of Shri Shankar N Uttamchandani in A.Y. 2020-21. On appeal by said person, the addition was deleted by Id. CIT(A) in order dated 23/08/2022 by treating the said document as dump document. In support thereof, the

assessee relied on various case laws on the ratio that no addition is to be made on the basis of dump paper and jottings and found from the third person.

5. The Id. CIT(A) on considering the submission of assessee summarized the submission of assessee in para 6.2 of his order. The Id. CIT(A) on considering such submission held that the Assessing Officer totally relied upon the loose paper found in the course of search action. No direct evidence was brought on record that the assessee purchased land of 3282 square meter by payment of on-money, the area of land mentioned on the loose paper does not match with the land actually purchased by assessee. The area of land is mentioned at 7852 square yard but the assessee has purchased only 3282 square meter vide sale deed dated 11/12/2015. The Id. CIT(A) further held that the loose paper is not in the handwriting of assessee, found from the premises of Shri Shankar N Uttamchandani. No statement of any person that the said paper pertains to land purchased by assessee was recorded. There is no specific details matching with the land purchased by the assessee. The Id. CIT(A) held that the loose paper found from the premises of Shri Shankar N Uttamchandani is a dump document and cannot be relied for making addition. No other evidence was found during the course of search action that the assessee made any on-money for purchase of land. The Assessing Officer relied on the nottings on the loose paper which cannot

be the sole basis for making addition for unexplained investment. On the basis of such observation, the Id. CIT(A) deleted the entire addition. Aggrieved by the action of Id. CIT(A), the revenue has filed present appeal before this Tribunal.

6. We have heard the submissions of learned Commissioner of Income Tax-Departmental Representative (Id. CIT-DR) for the revenue and the learned Authorised Representative (Id. AR) of the assessee. We have also gone through the orders of the lower authorities carefully. The Id. CIT-DR for the revenue supported the order of Assessing Officer. The Id. CIT-DR for the revenue submits that during the search action in the office of Shri Shankar N Uttamchandani at Kuberji Group, a paper was found containing certain details of land and its rate. The Assessing Officer detected the details of the said seized paper. The details mentioned in the seized paper were matching with the land purchased by the assessee in A.Y. 2015-16 for development of project Kuberji Textile Deck. The Assessing officer by confronting such details, issued show cause notice to the assessee for making such addition on the basis of incriminating evidence which was matching with the transaction carried out by the assessee. The Id. CIT(A) deleted the addition by taking a view that the said incriminating material is nothing but a dump document. The document was found from the office of Shri Shankar N Uttamchandani who was one of the partner in assessee's group. The

presumption under Section 132(4A) and 292(C) of the Act is clearly applicable against the assessee. The evidence found during the search action clearly suggests that the assessee indulged in making undisclosed investment on purchase of land. Thus, the assessing officer was justified in making the addition in the assessment order on the basis of seized documents.

7. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that during the search action, the seized paper found which was seized as Annexure A-4. The said paper is nothing but a dump document. It does not contain any detail such as name of the person as to who is the seller or purchaser, no date or details of payment is mentioned. The assessee purchases plot No. 265 from Rajubhai B Kheni for Rs. 2.26 crore and no evidence of on-money or unaccounted payment was found during the search action. The alleged incriminating material is not supported by any independent or corroborative evidence. No verification of fact was carried out by the Assessing Officer. The Assessing Officer has not examined the seller of the land. There is no evidence on record to suggest that the assessee was indulged in making unaccounted investment. The Id. AR of the assessee submits that he fully supports the order of Id. CIT(A). To support his various contention, the Id. AR of the assessee relied upon the following case laws:

- (1) CIT Vs Maulikumar K Shah 307 ITR 137 (Guj)
- (2) CIT Vs S. M. Aggrawala 293 ITR 43 (Del HC)
- (3) Jayantilal Patel Vs ACIT (1998) 233 ITR 588 (Raj)
- (4) S.K. Gupta Vs DCIT (1999) 63 TTJ (Delhi Trib) 532
- (5) Atul Kumar Jain Vs DCIT 64 TTJ 786 (Del Trib)
- (6) Pooja Bhatt Vs ACIT (2000) 73 ITD 205 (Mum Trib)
- (7) ITO Vs Shri Rajkumar Birla ITA NO. 934/944/945/Hyd/2012 (Hyd Trib)
- (8) Amar N Shah (1997) 6 ITD 560
- (9) Shed Akshay Pushpavadan Vs DCIT (2010) 130 TTJ 48 (Ahd)
- (10) ACIT Vs Shri Sharad Chaudhary ITA No. 933/Del/2012
- (11) Mohan Foods Ltd. Vs CIT 301 ITR 185.

8. In alternative submission, the Id. AR of the assessee submits that the assessee firm has already disclosed Rs. 11.00 crores under IDS-2016 against the project, even if any on-money expenditure incurred either for land or any other expenses, once the net profit is taxed, no separate addition is called. The Id AR for the assessee made prayer for dismissal of appeal filed by revenue.
9. We have considered the submissions of both the parties and gone through the orders of lower authorities carefully. We find that the Assessing Officer made exorbitant addition of Rs. 38.04 crores on the basis of certain figure mentioned on page No. 4 of Annexure-A/4 by taking a view that the assessee has purchased the land @ of Rs. 51,533/- per square yard of having area of 6565 square meter/7852 square yard. We find that no independent investigation of fact was carried out by the

Assessing Officer. The Assessing Officer has not examined the seller of land. No corroborative evidence either in the form of statement of any person is brought on record nor any summon or notice was issued to any person who may have been connected with the land for recording their statement. We find that the Assessing Officer has not been able to prove that the payment of any amount in cash on the transaction in question. The details mentioned in the loose paper does not match with the land purchased by the assessee. The loose paper found from the premises of Shri Shankar N Uttamchandani is nothing but a dump document. Shri Shankar N Uttamchandani has not made any statement that the said paper pertains to land purchased by assessee. On such observation, the Id. CIT(A) deleted the entire addition.

10. Being a search action, we have independently examined the facts of the case. On examination of facts, we find that the said loose paper does not contain any revenue survey treated the name of party, details of payment in past or in future. No attempt was made either by search party to collect some other corroborative evidence to connect the loose paper with any transaction of assessee with the land purchased by the assessee in the impugned assessment year. The stand of assessee right from the beginning is that they have purchased the land for a consideration of Rs. 2.26 crores. No attempt was made by the Assessing Officer to examine the seller to substantiate his contention of alleged on

money payment or if any addition to Jantri value. The assessee made any unexplained investment. Thus, in view of the aforesaid additional observation, we do not find any reason to interfere with the finding of Id. CIT(A) which we affirm.

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

IT(SS)A No. 64/SRT/2023 (AY: 2019-20) by revenue

12. The Revenue in the present appeal, though raised multiple grounds of appeal, however, in our considered view the substantial ground of appeal relates to deleting the addition of Rs.22.16 crores under section 69B based on MoU seized during the search action.

13. Brief facts of the case are that during the search on 06/02/2020, besides other document, a copy of MOU signed by Jitubhai Harjibhai Desai (benami Aai Jai Creations Pvt Ltd) and Naresh Agarwal dated 29/06/2018 was found. During the assessment, the Assessing Officer referred the contents of such MOU on page No. 3 and 4 of assessment order. The Assessing Officer on perusal of such MOU was of the view that such MOU was an agreement for non-agricultural land in Block No. 4 and 6 having final plot No. 55 and 58 of having area of 8421 square yard in village Kumbhariya, Surat. The land is owned by first party and was sold to Naresh Agarwal for a lump sum consideration of Rs. 72.41 crores. The term of payment is 30 months in three instalments. The Assessing Officer further recorded that Rs. 14.00 crores was payable on 31/12/2018 by

second party from his own capital or from market. The position of land was handed over to second party. The second party intended to make textile market on the land and collected Rs. 10.00 crores as booking receipt which was paid to the first party. The Assessing Officer further recorded that on analysis of digital data of mobile phone of Naresh Agarwal, certain details of payment to Aai Jee Creation Private Limited (first party of MOU) was found which was recorded on page No. 8 of assessment order. From the image, the Assessing Officer was of the view that the assessee made payment to Aai Jee Creation Private Limited and the ledger account of Kuberji Buildwell LLP it was found that the payment of Rs. 7.50 crores were made from 01/05/2019 to 31/03/2020. The assessing officer further recorded that on confronting such contents of MOU to Naresh Aggarwal during search action, he stated that said MOU was not executed (acted upon) due to economic slowdown. The statement of Naresh Aggarwal was not accepted by assessing officer. The assessing officer held that on enquiry from revenue record it was seen that land at block No. 28 of Saroli was transfer by Kuberji Textile Deck to Palika Infratech LLP in December 2018, thus, the MOU was acted upon and as per registered documents the consideration is of Rs. 2.25 Crore. As per MOU the land was agreed to be sold at Rs. 24.41 Crore. The land was in the name of Kuberji Textile Dec which was sold to Palika Infratech LLP for a total sale consideration at Rs. 2.25 Crore as per sale

price on sale deed, thus, difference of Rs. 22.16 was paid in cash to assessee. On the basis of such view the assessing officer made addition of Rs. 22.16 Crore in the assessment order dated 22.03.2022 passed under section 143(3) rws 153A.

14. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id CIT(A). Before Id CIT(A), the assessee filed detailed written submissions. The submissions of the assessee are recorded in para 6.4 of order of Id CIT(A). In the submissions, the assessee stated that Assessing Officer made addition of Rs.22.16 crores on the basis of page Nos.22-23 of Annexure-A1 seized from residence of Naresh Agarwal. As per MoU it was just decided to buy property at Block No.4 & 6, TPS No.s35,final plot Nos. 55& 58 of Kumbharia village for Rs.72.41 crores and it was decided to exchange property in Block No. 28, FP No.311 village Saroli for Rs.24.41 crores and difference of Rs.48 crores was to be paid by Naresh Agarwal in installments. The Assessing Officer made addition of Rs.22.16 crores even though the land was not purchased by Naresh Agarwal. The Block No.28 FP No.311 at Saroli was sold by Kuberji Textile Deck, (assessee-firm) as per Revenue Record. The sale deed was adopted at Rs.24.51 crores after reducing Rs.2.25 crores and balance of Rs.22.16 crores was added as an unaccounted receipt by invoking Section 69B of the Act. The assessee further contended that Naresh Agarwal in his statement categorically stated that said MoU was not

materialized, as has been noted in para-6.2 of assessment order. The assessee further stated that Naresh Agarwal file affidavit of Jitubhai Harjibhai Desai during assessment, who have denied having any transaction as per MoU. Neither any payments were made nor any installment was given as recorded in MoU. There is no evidence that any actual payment was made. No evidence was found in such proceedings. The assessee also stated that bother buyer and seller were not owners of said properties mentioned in the MoU, which were to be exchanged. The said Block Nos. 4A & 6, TPs Nos. 35, FP No.55 & 58 having area of 4821 square meters belongs to Bharat Mangaram Chaudhary and Gujaram U Chaudhary of M/s Aai Jee Creation Pvt. Ltd. Similarly, Block No.28 of Saroli village belonged to Kubarji Textile Deck and not by Naresh Agarwal in the personal capacity. The documents were registered in the name of assessee-firm by working partner, Dhirajbhai Debjibhai Gangani. The assessee relied on various case laws as recorded on page-7 of order of Ld.CIT(A).

15. The Ld.CIT(A) on considering the submission of assessee summarized entire submission in para-6.5 of his order. The Ld.CIT(A) further noted that Assessing Officer relied on MoU found during the search. Naresh Agarwal partner of the assessee, in his statement stated that MoU was not acted upon due to economic slow down. Similarly, Jitubhai Desai first party of MoU filed affidavit in the assessment wherein he confirmed that

said MoU was not executed. Thus, both the parties denied that MoU was not executed / acted upon. Further Jitubhai Desai was not the owner of Block No.4A and 6 of Kumbhiria village and no evidence was brought on record to prove the fact that he was benamidar of Aai Jee Creation Pvt. Ltd. As per MoU, Jitubhai Desai had to exchange the land he owned i.e., Block No.4A and 6, Kumbhiria village which would be used for constructed Textile Market. This land was transferred on 22.04.2021 by original owner to Shree Kuberji Build Venture LLP and whereas the land at Block No.28, Saroli village was to be exchanged as per MoU with Jitubhai Desai was sold almost 28 months earlier in December, 2018 to Palika Infraspaces LLP which is not related to Jitubhai Desai. Such facts proved that MoU was not acted upon. The Ld.CIT(A) further held that Jitubhai Desai was to be 30% partner in the project to be executed on the land at Block No.4A & 6 Kumbhiria village. However, the project has been executed by Shree Kuberji Build Venture LLP and Jitubhai Desai is not having any share in the said LLP, which proves that MoU was not actually acted upon. The Ld.CIT(A) further held that Jitubhai Desai was neither purchaser nor seller, nor owned any land as claimed in the MoU. No evidence was proved that he was benamidar in Aai Jee Creation Pvt. Ltd. There is no evidence of actual purchase or sale or evidence of exchange of any money as mentioned in MoU. Mere on the basis of clauses mentioned in the MoU, no addition can be made in the hand of

assessee. On the basis of such observation, the Ld.CIT(A) deleted the entire addition. Aggrieved by the order of Ld.CIT(A) the assessee has filed present appeal before the Tribunal.

16. We have heard the submissions of parties. The Ld.CIT-DR for the Revenue supported the order of Assessing Office and made submission on similar lines as made in appeal for assessment year 2016-17 and prayed that order of Assessing Officer may be restored by setting aside the order of Ld.CIT(A).

17. On the other hand, the Ld.AR of the assessee supported the order of Ld.CIT(A) and submits that there was no actual sale or purchase or exchange of land as mentioned in the MoU. The said MoU was never acted upon. Both the parties to MoU clearly took their stand that it was never acted upon. The Assessing Officer made addition on the basis of said MoU without actually verified the fact or bringing any evidence on record. No payments were made by any of the parties. No evidence of actual payment was found in the search action. The Ld. AR of the assessee finally submitted that he adopts all the submissions as made before Id CIT(A). The support his submissions, the Id AR for the assessee also relied on the decisions as relied in IT(SS)A No. 63/SRT/2023.

18. We have considered the rival submissions of both the parties and deliberated on various case laws relied by Ld.AR of the assessee. We find that the Assessing Officer made addition solely on the basis of MoU

found during the course of search action. During the assessment, the assessee explained that said MoU was never acted upon. The parties to the MoU was not the owner of various piece of land mentioned therein. There is no evidence that said MoU was actually acted upon. The partner of assessee, Naresh Agarwal right from the beginning took his stand that the said MoU was not acted upon. Naresh Agarwal in his statement recoded by such parties categorically took his said that said MoU was not materialized due to economic slowdown. Later on the other parties, who is signatory of MoU i.e. Jitubhai Harjibhai Desai also filed his affidavit that there was no actual transaction of purchase or sale as per said MoU. We find that before Ld.CIT(A) the assessee filed detailed written submission, on the basis of which, the assessee reiterated that there is no evidence of execution / acting upon on the MoU. We find that Ld.CIT(A) on appreciation of fact recorded entire sequence of the events and concluded that there is no independent evidence on record that MoU was acted upon or any exchange of money took place. Rather the details of land shown in the MoU are not owned by the parties, who are signatory to the said MoU. On independent examination on record, we find that no incriminating evidence was found during the search action that any money was exchanged between the signatory of MoU. Before the Search Party, Naresh Agarwal categorically stated that the MoU was not acted upon. Naresh Agarwal remained on his stand that the said MoU

was acted upon. In absence of any corroborative evidence to support the transaction of MoU, we do not find any infirmity or illegality in the order passed by Ld.CIT(A), which we affirm. In the result, the grounds of appeal raised by Revenue are dismissed.

19. In the result, this appeal of Revenue for assessment year 2019-20 is dismissed.

ITA No.223/SRT/2023 for A.Y 2020-21 by Revenue

20. Though the Revenue has raised multiple grounds of appeal, however, we find that the substantial ground of appeal relates to restricting to net profit (NP) @ 16.14% of on money against 30% of on money added by assessing officer.
21. We find that the grounds of appeal raised in the present appeal of Revenue are covered by the decision of this Tribunal in assessee's group case in Shree Kuberji Associates in IT(SS) A. 28 & 29/Srt/2023 & ITA No. 155/SRT/2023 and Shree Kuberji Leisure & Infraspac LLP in IT(SS)A and IT(SS).A. 30,31,34 & 35 /Srt/2023 for A.Y 2019-20 and 2020-21, order dated 23.12.2023, wherein the similar appeal of Revenue was dismissed by passing the following order:

“11. We have considered the submissions of both the parties on merit and carefully perused. We have also deliberated on various case laws relied by Ld. AR for the assessee before the lower authorities as well as before us. As recorded above, the Assessing Officer worked out the figure of on-money in respect of all the units of assessee despite the fact that incriminating material indicates

on-money in respect of certain units. Further Satakat was found only in respect of shop No. 3001 and 3002. The Assessing Officer has not considered the location of floor or frontage or entrance position. In commercial project, uniform rate is not possible irrespective of floors. Further no interpolation is permissible when there is no evidence in respect of 100% units. Further there is always difference in the rate so far as payment period is concerned. We find that the Id. CIT(A) on considering the various submissions of assessee accepted the contention of assessee that on the basis of incriminating material certain discount was allowed and prices were subjected to negotiation. On the basis of different factors affecting the rate on various floors, the Id. CIT(A) reduced 15% on the gross money in entire estimation. The Id. CIT(A) on considering the decision of various Tribunals and High Courts was of the view that profit rates of on-money in various cases ranges from 8% to 17% on the project situated in the city area. Since project of assessee was in the outskirts of city and that the assessee has already declared 7.4% profit and reasonable good amount in IDS 2016, the Id. CIT(A) restricted the addition to the extent of 13% thereby allowed partial/substantial relief.

12. Being a search case, we have independently examined the facts of the case. On examination of facts, we find that incriminating material is not found relating to each and every unit. The Assessing Officer extrapolated the rate in respect of all 384 units. No independent investigation of facts was carried out by Assessing Officer during assessment proceedings. There is no refinance in the assessment order that the search party while preparing appraisal report suggested collection of on money in respect of all the units. There is no allegation of Assessing Officer that units were sold below the Jantri rate. No other independent evidence or material to substantiate the on-money in respect of 100% of unit is brought on record.

13. We find that Hon'ble Jurisdictional High Court in CIT Vs Standard Tea Processing Co. Ltd. (2013) 34 taxmann.com 31 (Guj) held that the addition for undisclosed income on account of inflated purchase price can be made only for the period to which document found during the search is related and not for the entire block period. The Hon'ble Karnataka High Court in CIT Vs B. Nagendra Baliga (2014) 47 taxmann.com 331 (Kar) held that the Assessing Officer has not entitled to extrapolate undisclosed income detected in the course of search for a particular period to entire block period on estimate basis. Further the Coordinate Bench of Tribunal in ACIT Vs M/s Amar Corporation Ltd. ITA No. 2036/Ahd/2007 and in Sayan Textiles Park Ltd. Vs ACIT in ITA No. 360/Ahd/2014 also held that question of extrapolation can only arise only in a situation when the documents give an indication that it was a regular occurrence in a systematic manner. Thus, in view of aforesaid factual and legal discussion, we uphold the order of Id. CIT(A) on our aforesaid observations. In the result, grounds of appeal raised by revenue as well as assessee are dismissed.”
22. Considering the aforesaid decision of this combination, we do not find any merit in the grounds of appeal raised by revenue. In the result, the appeal filed by Revenue is dismissed.

Order announced in open court on 29th December, 2023.

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 29/12/2023
**Ranjan*

Copy to:

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

By order

// True Copy //

Sr. Private Secretary, ITAT, Surat