IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.1338 & 1432/PUN/2023 [E-APPEALS]

Assessment Year 2010-2011

ITA.Nos.1339 & 1433/PUN./2023 [E-APPEALS]

Assessment Year 2015-2016

Shri Mitul Jagdishchandra Shah, FP No.34/P, Sub Plot No.2, Opp. Akhandanand College, Ved Road, SURAT. PIN – 395 004 Gujarat. PAN AFJPS3572D	vs	The ACIT, Circle, Opp MSEB Office, Sakri Road, DHULE. Maharashtra. PIN – 424 304.
(Appellant)		(Respondent/Cross-Appellant)

For Assessee :	Shri R. Shah
For Revenue :	Shri Keyur Patel, CIT-DR And Shri Ramnath P. Murkunde

Date of Hearing :	11.09.2024
Date of Pronouncement :	15.10.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

These assessee's and Revenue's twin appeals each i.e., I.T.A.No.1338 and 1339/ PUN/2023 and Revenue's twin cross-appeals I.T.A.Nos.1432 and 1433/PUN./2023, for assessment years 2010-11 and 2015-2016, arise against the CIT(A), Pune-11, Pune's DIN & Order no.ITBA/APL./S/250/2023-24/ 1057484205(1) and 1057483879(1), both dated 30.10.2023, in proceedings u/sec.143(3) r.w.s.147 of the Income Tax Act, 1961 [in short "the Act"]; assessment year-wise; respectively.

Heard both the parties at length. Case files perused.

2. We advert to the former assessment year 2010-11 herein involving assessee's and Revenue's cross-appeals ITA.Nos.1338 and 1432/PUN./2023; respectively. The assessee raises his first and foremost substantive ground challenging validity of the impugned reopening itself as not sustainable in law for the precise reason that the learned Assessing Officer had set into motion the said mechanism in absence of a valid approval;

or of for that, in absence of any approval whatsoever; coming from the prescribed authority at that point of time.

3. It is in this limited context that we proceed to examine the relevant facts in this former AY 2010-11. The assessee is admittedly assessed as an individual. He is stated to be proprietor of M/s. Megh Mayur Park Housing and also runs retail fuel outlet(s). The assessee had filed his return for AY 2010-11 on 28.03.2011 stating income of Rs.2,25,36,950/- which stood summarily processed u/sec.143(1) of the Act. The Assessing Officer thereafter took-up scrutiny and completed his sec.143(3) assessment on 06.03.2013 (pages 42 to 47 in the PB) adding short term capital gains of Rs.71,30,913/- thereby assessing taxable income in assessee's case to the tune of Rs.2,96,67,863/-

4. We proceed further and note that the learned Assessing Officer thereafter formed reasons to believe that the assessee's taxable income liable to be assessed had escaped assessment which represented cash deposits of Rs.54.50 lakhs as well as loans to the tune of Rs.3,46,92,700/- from M/s. Megh Mayur Realty Pvt. Ltd., There is hardly any dispute between the parties that all this culminated in the impugned twin additions made in

assessee's hands in AO's re-assessment dated 29.12.2017; which in turn; stand upheld in the CIT(A)'s order under challenge only *qua* the former item. This leaves both the parties aggrieved who have instituted their respective cross-appeals ITA.Nos.1338 & 1432/PUN./2023 (supra) for assessment year 2010-2011.

5. We now come to above legal issue of validity of the impugned reopening itself. A perusal of the case file indicates at page-18 that the learned Assessing Officer had issued sec.148 notice on 31.03.2017 at 7.53 PM whereas the prescribed authority i.e., the PCIT, Nashik, intimated/approved the same on the very date at 10.:06PM on the very date. This clinching fact has gone un-rebutted from the Revenue's side. We wish to make it clear that the assessee has also enclosed the corresponding postal receipts as well as approval/intimation coming from the prescribed authority to this effect in the case file. It is thus an instance wherein the learned AO has initiated the impugned 148 / 147 proceedings against the assessee without getting sec.151 approval and therefore, the same is held to be not sustainable in law going by Mrs. Amina Rasool vs. ITO [2014] 161 TTJ 405 (Amritsar) deciding the very issue in assessee's favour and against the department as under :

5. With regard to the issue of jurisdiction, the learned counsel for the assessee argued that the learned CIT(A) has erred to the issue of jurisdiction by making reference to the point that the assessee had not filed the return for asst. yr. 2003-04 and then concluded that because of non-filing of the return for the asst. yr. 2003-04 the AO Ward 3(1) has valid jurisdiction of the assessee. It was further stated that the learned CIT(A) has completely ignored the fact and documentary evidence placed before him that the assessee was seen assessed at Delhi Ward 46(4). The learned counsel further stated that it is a known fact of law that at a particular time there can be only one jurisdiction for the assessee and that jurisdiction lay with AO, Delhi in case of *CIT* v. *Aar Bee Industries* [2013] 357 ITR 542/36 taxmann.com 308, the Hon'ble Delhi High Court has held that there cannot be two AOs at a single point of time. The learned counsel stated that the referred case pertains to the order of this Bench i.e. Tribunal, Amritsar which has been discussed in detail by the Hon'ble Delhi High Court, wherein the Hon'ble High Court has held that 'There could be only one AO in respect of a case at point of time when present appeals are filed AO insofar as all the cases of assessee are concerned was AO at Delhi". It is accepted by the CIT(A) as well as AO that the assessee at the time of assessment had filed his returns at Delhi in respect of various assessment years from the year 2005 to the year 2011. These are detailed at Sr. No. 4 on page No. 5 of the CIT(A)'s order. It was accordingly submitted that the assessment being bad in law needs to be quashed.

6. With regards to other grounds, i.e. ground Nos. 3 and 4 the learned counsel for the assessee argued that the authorities below did not take the cognizance of financial statements and books of account and there is no applicability of s. 69A of the Act. Accordingly, the learned counsel for the assessee prayed to allow the appeal of the assessee.

7. The learned Departmental Representative, on the other hand, relied upon the orders of both the 81 authorities below.

8. We have heard the rival contentions and perused the facts of the case. There is no dispute to the facts, as is evident from the order of the AO that a notice under s. 148 of the Act was issued on 30th March, 2009 after recording the reasons and after obtaining approval from the Addl. CIT vide letter No. 1147 dt. 30th March, 2009. In this regard, there is no dispute to the fact that the approval of Addl. CIT, Range-II, Srinagar, was obtained vide letter No. 1147 dt. 30th March, 2009 only. There is no reference of any earlier notice under s. 148 of the Act. The learned counsel for the assessee, Mr. Upender Bhat, chartered accountant invited our attention to the letter dt. 1st Nov., 2008 issued by the ITO Ward-1, Srinagar, which clearly refers to the notice issued by the said office under s. 148 for the impugned assessment year which is dt. 23rd Jan., 2009 and letter dt. 8th Nov., 2007 in this regard. For the sake of convenience, the said letter appearing at paper book-6 is reproduced as under :

> "Sub : Assessment proceedings for the asst yr. 2003-04—Reg.
>
> Please refer to this office notice under s. 148 of the IT Act, 1961 for the asst. yr. 2003-04 dt. 23rd Jan., 2008 and letter dt. 8th Nov., 2007.
>
> 2. In this connection, you are requested to intimate the undersigned whether return in response to the above notice has been filed by you or not. If yes, please give the date and receipt No. If no return in response to the above notice has been filed then please intimate whether the return for the asst. yr. 2003-04 was filed by you originally or not. If yes, then please furnish the copy of complete return filed originally or its proof thereof.
>
> 3. As per the information available in this office, you have deposited an aggregate amount of Rs. 24,27,518 during the financial year 2002-03 relevant to the asst. yr. 2003-04 on different dates in the saving bank account No. 332, J&K Bank, Chanpora. You are requested to please intimate the following :

(*i*) Your source of income during the year and your gross income.

(*ii*) Source of the amount deposited as per the details given above, along with documentary evidence.

(*iii*) Give details of your personal and household expenditure during the year.

(*iv*) Reply to letter dt. 8th Nov., 2007 (copy enclosed for reference)

4. Your reply should reach this office by 27th Nov., 2008. Notice under s. 142(1) of the IT Act, 1961 is enclosed herewith.

Yours faithfully,

(Satbir Singh)

ITO, Sgr."

8.1 Also notice under s. 142(1) dt. 11th Nov., 2008 placed at paper book 7 is reproduced for the sake of convenience as under :

"In connection with the assessment for the asst. yr. 2003-04 you are required to :

(*a*) ** prepare a true and correct return of your income/the firms income/family's income/th local authority's income/the company's income/income of the AOP/income of th BOI/income of ..... in respect of which you are assessable under the IT Act, 1961 durin the previous year relevant to the assessment year mentioned above. The return should b in the appropriate form as prescribed in r. 12 of the IT Rules, 1962. It should be dul verified and signed in accordance with the provisions of s. 140 of the said Act an delivered at my office on or before .....

(*b*) ** produce or cause to be produced before me at my office at Raj Bagh on 27/11/2008 a 11.30 AM/PM the accounts and/or documents specified below/overleaf.

(*c*) ***furnish in writing and verified in the prescribed manner information called for as pe annexures and on the points or matters specified thereinbefore me at my office at... or .....at AM/PM.

Yours faithfully

Sd/

AO, ITO, Srinagar."

8.2 Therefore, in the facts and circumstances of the present case and the notices issued by th Department reproduced hereinabove, which have not been denied by the learned Departmenta Representative, the AO Srinagar had issued notice under s. 148 on 23rd Jan., 2008 without obtainin the approval from the Addl. CIT, which approval, in fact, was taken vide letter No. 1147 dt. 30t March, 2009 which is evident from p. 1 of AO's order as reproduced hereinabove. As per s. 151(2) no notice under s. 148(1) can be issued by an AO, who is below the rank of Jt. CIT, after the expir of four years from the end of the relevant assessment year, unless the Jt. CIT is satisfied, on th reasons recorded by such AO, that it is a fit case for the issue of such notice. In the present case such satisfaction of Jt. CIT/Addl. CIT was taken only on 30th March, 2009 whereas notice under s. 148 was issued on 23rd Jan., 2008 which is prior to the said satisfaction or approval of Jt./Addl. CIT. Therefore, on this account, the notice issued under s. 148 is bad in law and is liable to be quashed. Therefore, the reassessment proceedings initiated are directed to be quashed. Accordingly ground No. 1 of the assessee is allowed.

9. As regards the jurisdiction issue, as submitted by the learned counsel for the assessee, there is no dispute to the fact that the assessee has been filing the return of income since inception i.e. asst. yr. 2005-06 till asst. yr. 2010-11 with the ITO, Ward 46(1), New Delhi and it was submitted that for the later years also, the returns have been filed in New Delhi, itself. As regards the findings of the AO that the assessee has not filed the return of income for the asst. yr. 2003-04 and therefore, jurisdiction vests with the ITO, Srinagar cannot hold good for the reasons that the assessee had filed first return of income for the asst. yr. 2005-06 and for the earlier years she was not taxable and therefore, no return has been filed for those years, and the jurisdiction in any case can lie only with one AO in respect of the case and there cannot be jurisdiction of a case with two AOs of two different jurisdictions, as has been held in the case of *Aar Bee Industries* (*supra*) and headnote of the same is reproduced for the sake of convenience, as under :

> "It was true that the reference to the case was with regard to the jurisdiction of an IT authority, but it was also true that the jurisdiction of the High Court is determined by the situs of the AO. When the AO itself had been changed from one place to another, the High Court exercising jurisdiction in respect of the territory covered by the transferee AO would be the one which would have jurisdiction to hear the appeal under s. 260A. Even in case of *Ambica Industries* (*supra*), a decision relied upon by the assessee, it had been held that it would be the situs of the AO and not the situs of the Tribunal which would have the determinative factor with regard to the jurisdiction of the High Court hearing an appeal. Of course, the above decision was not one rendered under the IT Act, but was one which pertained to an appeal to the High Court under the Central Excise Act, 1944. In any event, there was nothing in Ambica Industries, which could enable us to take a view different. It was a. well accepted principle that there could be only one AO in respect of a case. At the point of time, when the present appeals were filed, the AO insofar as all the cases of the respondent were concerned, was the AO at Delhi. It was held that the fact that the Amritsar Bench of the Tribunal had passed the impugned orders or the fact that the initial assessment orders were passed by the AO at Jammu would not be relevant for the purposes of determining the jurisdiction of the Court at the point of time at which an appeal under s. 260A was filed. It was the date on which the appeal was filed which would be the material point of time for considering as to in which Court the appeal was to be filed. On the dates on which the present appeals were filed, the AO of the assessee was the AO at New Delhi and therefore, High Court, Delhi would have jurisdiction to entertain these appeals. In view of the foregoing, it was held that the present appeals were maintainable before High Court, Delhi.
>
> When the AO itself has been changed from one place to another, the High Court exercising jurisdiction in respect of the territory covered by the transferee AO would be the one which would have jurisdiction to hear the appeal under s. 260A."

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6. We adopt the above detailed discussion *mutatis mutandis* to accept the assessee's instant legal ground challenging validity of the impugned reopening in very terms. He accordingly succeeds in his appeal ITA.No.1338/PUN./2023 and Revenue's cross-appeal ITA.1432/PUN./2023 is dismissed as a necessary corollary therefore. Ordered accordingly.

8. We now deal with the assessee's and Revenue's cross-appeals ITA.No.1339 and 1433/PUN./2023 for the latter assessment year 2015-16. The former's sole substantive grievance herein challenges correctness of both the learned lower authorities action making addition of Rs.9,55,65,676/- as representing the alleged "retracted disclosure" during the course of survey carried-out in his case on 26.12.2014. Learned CIT(A)'s detailed discussion affirming the same reads as under :

13. Accordingly, after examining the impounded material, statement recorded during survey, post survey proceedings, submissions of the assessee and the legal position regarding the validity of statement recorded during survey, the Assessing Officer held that the transactions amounting to Rs. 9,55,65,676/- found recorded on the impounded material reflects unaccounted income of the assessee and accordingly an addition of Rs. 9,55,65,676/- was made by the Assessing Officer.

14. During the appellate proceedings, the appellant has submitted a written submission on 26/04/2023 on ITBA. The various contentions raised by the appellant are summarised as under:-

i) At the time of survey, the appellant was physically and mentally tired. The disclosure was made after having a cursory glance over the impounded periods. However, subsequently, these papers are examined and it was found that the many of the notings are only in the nature of rough jottings.

ii) All the papers in annexure BI-1, BI-2 and BI-3 are clearly dumb papers as no name or narration or any reference was found on these papers and many papers were marked cancelled.

iii) Even otherwise, the figures or notings made on these dumb papers represented the money in circulation out of specific disclosure of Rs. 14.61 Crores on account of Gaviar Land and Rs. 18.45 crores made on account of Khambasala Land by the assessee and his mother and Rs. 8,18,30,000/- made on account of project of M/s Sumeru Textiles Pvt. Limited. Therefore, the figure of Rs. 9,55,66,676/- reflected on loose papers are overlapping with the disclosures.

iv) The assessee did not make any deposit of cash in respect of declaration of Rs. 9,55,65,676/- in the bank account.

v) The statement recorded during the survey has no evidentiary value and is not binding on the assessee as held in the case of ***CIT vs Khader Khan 300 ITR 157 (Madras)*** and ***Paul Mathews & Sons vs CIT 263 ITR 101 (Kerela)***. The appellant has further submitted that although at the time of survey, statement was recorded u/s 131 of the Act but same should be considered as the statement recorded u/s 133A because it is not a case of non-cooperation by the assessee during survey and hence sec. 133A(6) is not applicable.

vi) The CBDT in Instruction no. F. No. 286/2/2003-IT(Inv.) dated 10/02/2003 clearly provides that no confession should be taken during the survey and the assessment should be made on the basis of credible evidences.

vii) The Assessing Officer has observed that the assessee was not maintaining any books of accounts w.r.t. land dealings. Since the assessee is not carrying on any land dealing business in his personal capacity, it is not mandatory for the appellant to maintain any books of accounts.

viii) The appellant has given page wise explanation of various impounded pages and has claimed that all these documents are dumb documents.

ix) The assessee and his family members as well as group concerns have declared additional income of Rs. 41.25 Crores and therefore the cash so generated would not have been kept idle and obviously the funds remained in circulation. Therefore, all the notings on impounded papers in annexure BI-1, BI-2 and BI-3 must be treated as covered by money in circulation and no additional addition of Rs. 9,55,65,676/- should be made.

15. I have considered the facts of the case and the submissions made by the appellant. The main contention of the appellant is that the statement recorded during the survey operation does not have any evidentiary value as held by Hon. Madras High Court in the case of *S. Khader Khan (supra) (SLP dismissed by Hon. SC)*. The issue of evidentiary value of a statement recorded during the survey operation has been examined by various courts from time to time wherein it has been held that the statement recorded during the survey carries an evidentiary value and can be used while completing the assessment. Some of these decisions are as under:

16.1 Pebble Investment and Finance Ltd vs ITO (ITA No. 988/2014) (Bombay HC)

9. We note that a statement made under Section 133A of the Act is not bereft of any evidentiary value. The same may not be conclusive but in the absence of any contrary evidence or explanation as to why the statement made under Section 133A of the Act is not credible, it can be acted upon. The decision of Madras High Court in CIT v/s. S. Khader Khan Son reported in 300 ITR 157 as upheld by the Apex Court, is not of any assistance to the Appellant. In the facts before the Court in S. Khader Khan (supra), the person who made the statement under Section 133A of the Act had retracted it before the Assessment Order was passed. Moreover, in the absence of the the Appellant-Assessee offering any explanation as to why the statement cannot be relied upon, no fault can be found on the reliance upon the statement of the Director of M/s. Omega. Further, so far as request for cross examination is concerned, we find that Appellant-Assessee, during the first round of proceedings before the Assessing Officer did not raise any such issue. At that point of time, the person who make the statement, could have been produced by the Assessing Officer. It was only in the second round of proceedings when the Appellant-Assessee was not able to contact the Director of M/s. Omega, that they came up with a request for his cross examination. Therefore, the submission on part of the Appellant that the delay has led to it being unable to produce evidence is of no avail as the delay was in seeking cross examination by it. Further, the documents which were produced were considered along with and/or the facts viz: nonproduction of vital documents. This coupled with the fact that the owner of the

Furnace i.e. Appellant did not have any knowledge about its whereabouts at the time of adjudication.

This decision was subsequently upheld by **Hon'ble SC in SLP (C) No. 1784/2017 dated 05/07/2017**.

6.2 Raj Hans Towers (P) Ltd vs CIT 230 Taxman 567 (Delhi HC)

8. ..... The discretion vested in the Revenue authorities in content and character is not radically different in the case of a survey or in the case of search and seizure operations as is evident from a plain reading of Sections 133A (3) and 132(4). Whereas the latter uses the expression "may examine on oath", the former says that the authority "may record statement which may be useful for, or relevant to" in proceedings under the Act. This provision, Section 133A (3) had undergone further amendment inasmuch asthe Revenue is precluded from taking any action under Section 133A (3) (ia) or Section 133A (3) (ii), i.e., from impounding and taking into custody any books of account, etc. or making an inventory of any cash, stock or other valuable item verified by him while acting under Section 133 (2A) by the Finance Act 2 of 2014. The obvious inference, therefore, is that in respect of statement which fall in Section 133A (3) (iii), the discretion to use it as a relevant material continues.

9. This Court is conscious that in Dhingra Metal (supra) the Division Bench used the expression "conclusive evidence". Now, that expression has to be understood in its common parlance and not in a legal sense, i.e., it cannot be understood to mean something which is to be proved beyond reasonable doubt. Such burden does not arise and cannot be expected to be discharged by the Revenue. Instead, the reference to the presumption under Section 132 (4A) refers to presumption of fact of the genre Section 114 of the Evidence Act deals with it. Likewise, the relevance and admissibility follow the same train of thought conceptually, when one comes to Section 133A (3) (iii). All that this provision enables to the authority concerned to do is to draw an adverse inference by relying upon materials which are seized, or dealt with in the course of the survey.

10. In the present case, the admitted facts are that during the survey, a Director of the assessee - who was duly authorized to make a statement about the materials and the undisclosed income, did so on 20.11.2007. The Company did not retract it immediately or any time before the show cause was issued to it. For the first time, in reply to the show cause notice it faintly urged that the statement was not voluntary and sought to retract it. The reply, a copy of which has been placed on record, undoubtedly makes reference to some previous letter retracting the statement. Learned counsel urged that that letter was written on 21.12.2007. However, the actual reply to the show cause notice is silent as to the date. This itself casts doubt as to whether the retraction was in fact made or was claimed as an afterthought.

16.3 Navdeep Dhingra 56 taxmann.com 75 (P&H HC)

> *11. The onus to prove concealment of income lies upon the revenue. Admissions are an integral part of assessments and as they are the best evidence of a fact, within the personal knowledge of an assessee may if the admission is voluntary and not extracted by coercion or force, be read against an assessee. The relevance of an admission admits to another exception namely if the admission is retracted within reasonable time and by assigning valid reasons. A perusal of the impugned orders reveals that the assessee made an admission, on 18.01.2006 and followed it up by a written admission on 19.01.2006 but while filing his return did not retract the admission. At no stage of the survey or assessment proceedings except at its fag end on 4.12.2008 i.e. almost two years after the admissions and a few weeks before finalisation of the assessment, did the assessee raise a plea that he was coerced and forced into making admissions. The belated retracting of the admissions on 04.12.2008, nearly two years after the admissions and then also without any facts to support the allegation of coercion or pressure, cannot enure to the benefit of the assessee. An admission is substantial evidence of a fact, within the special knowledge of an assessee and if not retracted immediately or within reasonable time is substantive evidence of a fact and may be read against an assessee. We, therefore, answer the above questions against the assessee and as we find no reason to hold that the revenue has erred in relying upon admissions made by the assessee, dismiss the appeal.*

16.4 Dr. S.C. Gupta 118 Taxman 252 (Allahabad HC)

> *An admission is an extremely important piece of evidence though it is not conclusive. Therefore, a statement made volunterily by the assessee could form the basis of assessment. The mere fact that the assessee retracted the statement could not make the statement unacceptable. The burden lay on the assessee to establish that the admission made in the statement at the time of survey was wrong and, in fact, there was no additional income. This burden did not even seem to have been attempted to be discharged.*

17. The above case laws clearly lay down a position that the statement recorded during survey operation does carry an evidentiary value and can be used by the Assessing Officer while framing the assessment. It has also been held that the statement can be retracted but such retraction can be held as valid only when such statement was recorded under threat or coercion or there is mistake in recording of facts in the statement. It has also been held that retraction if any should be immediate and also such retraction should be supported by documentary evidences. If any of these ingredients is not present in a case, the retraction will not be considered as valid and such statement can be used as evidence. In the present case, the impounded

documents were confronted with the appellant and in the statement recorded during the survey on 27/12/2014, the appellant admitted that there are discrepancies in the loose papers impounded as BI-1, BI-2 and BI-3and accordingly admitted an additional income of Rs. 6,71,70,000/-. The statement of appellant was again recorded u/s 131 of the Act on 05/01/2015 wherein the above disclosure was reconfirmed by the appellant. Subsequently, the appellant filed page wise analysis of these impounded loose papers and discrepancies in this explanation was again confronted with the appellant on 02/02/2015, wherein the disclosure on account of these loose papers was enhanced from Rs. 6,71,70,000/- to Rs. 9,55,65,676/-. In this manner, the appellant after declaring additional income during the survey on 27/12/2014, re-confirmed the same on 05/01/2015 and after further examination of impounded documents, enhanced the same on 02/02/2015. **Thus, after making disclosure during survey, the appellant has re-confirmed his disclosure on two subsequent occasions.**

18. Further, the appellant did not file any retraction letter with the Assessing Officer or ITO, Inv., Vapi and it is only after a lapse of more than two years, the appellant filed a retraction letter with the Assessing Officer on 29/03/2017 (para 3 of the assessment order). Thus, by no manner, it can be considered that the appellant has retracted the statement within a reasonable period of time.

19. While examining the retraction of a statement, the judicial bodies have observed that the admission by a person is a good piece of evidence and the same can be used against a person who makes it. The reason behind this is, a person making a statement stops the opposite party from making further investigation ***[Hotel Kiran vs ACIT 82 ITD 453 (Pune Tribunal)].*** Further, the Hon. Delhi High Court in the case of ***CIT vs M.S. Agarwal [2018] 93 taxmann.com 247 (Delhi)*** has observed that the motive of the person at the time of making admission is to gain indulgence, advantage or avoid evil of temporary nature cannot be treated as equivalent to coercion. The relevant portion of this decision is as under:-

> *32. Confessions are important for when voluntarily made there is a presumption that no person would make a statement against his interest unless it is true. Therefore, courts have to be cautious and careful that the confession recorded was voluntarily and not obtained under coercion and by force and wrongful inducement. Force and coercion are not synonymous and cannot be mixed and equated with mere anxiety*

and stress due to search and seizure operations, or inducement propelled by remorse and atonement to make an admission and confess a wrong. Motive of the person making the admission to gain indulgence, advantage or avoid evil of a temporal nature, cannot be treated as equivalent to inducement, coercion or fraud. Whether a confession is voluntary or induced by force, threat, coercion and wrongful inducement would primarily be one of fact, albeit any judicial verdict and decision on the issue must take all relevant facts and circumstances of the case into consideration and should not be guided by mere pre-ordained impressions. Factors like time of retraction, nature and manner of retraction etc. are relevant. Mere retraction does not make or proves that the admission was obtained by inducement, threat etc. Further, prudence requires that the court would examine the truthfulness and correctness of the admission when admissions are accepted and relied. Corroboration by attending circumstances may be justified.

In the present case while admitting the additional income during the survey as well as post survey investigations, the appellant has stopped the further investigation at that point of time. Clearly, this disclosure was made by the appellant at that time in order to gain advantage by stopping the further investigation at that time.

20. One of the reasons given by the appellant for retracting the declaration of Rs. 9.55 Crores is that at the time of survey he was under stress and the disclosure was made by having a cursory look on the impounded documents and therefore such declaration should not be considered as final. This argument of the appellant is factually incorrect because for loose document bundle no. BI-1, BI-2 and BI-3, at the time of survey declaration was made to the extent of Rs. 6,71,70,000/-, however, after examination of documents and after more than one month, this declaration was increased to Rs. 9,55,65,676/- on 02/02/2015. The declaration made on 02/02/2015 cannot be considered as in haste, or in coercion/stress. Further, by no stretch of imagination, the declaration made on 02/02/2015 can be considered as without examining the impounded documents because this declaration is based on appellant's detailed examination which is reproduced in the statement recorded on 02/02/2015.

21. The appellant has relied on the decision of Hon. Madras High Court in the case of *S. Khader Khan (supra)*. The said decision has been distinguished by the Assessing Officer. I agree with the comments of the Assessing Officer on this issue because in the case of *S. Khader Khan (supra)*, the declaration was retracted within 11 days of recording of statement, however, in the case in

hand, the statement was retracted after a period of 27 months. Considering the above discussion, as well as legal position, the retraction of declaration of additional income of Rs. 9,55,65,676/- cannot be considered as valid. Therefore, in the present case, statements recorded on 27/12/2014, 05/01/2015 and 02/02/2015 are valid evidences which can be used for the purposes of making assessment.

22. The appellant has taken a plea that as per the Board's Instruction, the authorised officer is not empowered to take any confession/disclosure. In this connection, it may be mentioned that the Board's instruction dated 11/03/2003 has been examined by Hon. Delhi High Court in the case of **Bhagirath Aggarwal vs CIT [2013] 215 Taxman 229/ 351 ITR 143 (Delhi)** wherein the Hon. High Court has observed as under:-

> *13. The learned counsel for the appellant also referred to the circular dated 11.03.2003 issued by the Central Board of Direct Taxes on the subject of Additional Income during the course of Search and Seizure Operation. As per the circular, there is an observation of the Board that the focus of the search party should be on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department. There is a further observation that, while recording statements during the course of search, seizure and survey operations, no attempt should be made to obtain confessions as to undisclosed income and that any action to the contrary would be viewed adversely.*
>
> ***14.We do not see how this circular would, in anyway, come to the aid and assistance of the appellant. All that it shows is that the Income-tax Officers should not try to force a confession from an assessee. However, if an assessee voluntarily makes a surrender, the officials of the income tax department are bound to record that statement u/s 132(4) and such a statement, voluntarily made, is relevant and admissible and is liable to be used as evidence.***

(emphasis supplied)

23. In view of above decision of Hon. Delhi High Court, it is held that the reliance of the appellant on Board's instruction is misplaced.

24. The appellant has further contended that the documents impounded as BI-1, BI-2 and BI-3 are dumb documents and no addition can be made on the basis of dumb documents. In this connection, it may be stated that it is a well settled legal position that in order to make an addition on the basis of a seized

document, it is sufficient to show either through the document itself or with the support of any other material evidence (oral evidence or documentary evidence), that the taxable event has actually occurred and the taxable income, year of taxation as well as the person in whose hands the addition is proposed, are ascertainable. In the present case, the impounded document coupled with oral evidence in the form of statement recorded during the survey as well as u/s 131 of the Act on 05/01/2015 and 02/02/2015, are sufficient to suggest that the appellant had undertaken certain unaccounted cash transactions which stands explained by him during the post survey enquiries wherein he admitted additional income of Rs. 9,55,65,676/-. Thus, it cannot be said that the documents impounded are dumb documents.

25. In any case, the explanation of the appellant regarding the nature of transactions has been reproduced at para 11 of the assessment order indicating that the appellant has given details of each of the pages impounded during the survey. In his explanation, amount appearing on each page has been quantified by the appellant and the nature of transaction has also been explained. For example:-

(i) For page no. 85/BI-1, the appellant has explained as under:-

"This page contains details of sale of land for total consideration of Rs. 782.97 Lacs. The amount of Rs. 295.05 Lacs shown as others, describes as cash receipts. This may be treated as covered in disclosure of Rs. 6.71 Crores in individual capacity".

(ii) Similarly, for page no. 44-45/BI-1, the appellant had stated as under:-

This is a Sauda Chitti in respect of Altham Land admn. 668 Sq. Mtr. For total sale consideration of Rs. 2,96,31,000/-. Rs. 5,00,000/- given by cash has not been accounted for. This may please by treated as covered by a lumpsum decIration of Rs. 6,71,70,000/- in individual capacity.

(iii) For page no. 144, following was submitted at the time of post survey investigation:-

This page contains details of transaction of Rs. 29,84,200/-. This may be treated as covered in disclosure of Rs. 6.71 Crores in individual capacity.

(iv) Similarly, for page no. 146, following was submitted at the time of post survey investigation:-

This page contains details of cash payments of Rs. 11,00,000/- towards purchase of land Block No. 204, Scheme-13. This may be treated as covered in disclosure of Rs. 6.71 crores in individual capacity.

(v) For Page no. 159,following was submitted at the time of post survey investigation:-

This amount is peak amount of Rs. 49,27,608/-. This may be treated as covered in disclosure of Rs. 6.71 crores in individual capacity.

The appellant has given similar explanation for other pages. The above explanation submitted during the post survey investigation suggest that the appellant had explained the nature of notings and also quantified the amount of undisclosed income on the basis of notings on various impounded documents. Thus, it cannot be said that the pages are dumb document because the impounded documents are duly supported by a series of statements recorded during survey as well as post survey proceedings. In view of this discussion, the appellant's contention that the documents are dumb document and no addition can be made on the basis of these documents, cannot be accepted.

26.1 The next argument of the appellant is that the observation of the Assessing Officer regarding non-maintenance of books of accounts for his land dealing is incorrect because he was not doing any land dealing business in individual capacity and therefore, he was under no obligation to maintain such books of accounts. This argument of the appellant is factually incorrect. During the survey operation, various documents regarding the land dealing undertaken by the appellant in his individual capacity were found. For example, in reply to Q. No. 12 in the statement recorded on 27/12/2014, following was admitted by the appellant:-

A. 12 I have inspected the said diaries thoroughly and I confirm that the same belongs to me. The details are as under:

1. Annexure BI-4, BI-6, BI-7, BI-8 and BI-9 are related to my transactions with respect to land situated at Gavier, Surat wherein we acted as a Mediator and had earned net profit of Rs. 14.61 Crores in cash which is exclusive of all expenses and the same is not reflected in any of the regular books of accounts of me and my group concerns. Since the documents related to the transactions reflected in the above diaries is yet to be executed, we admit this amount as unaccounted income and offer the same for taxation in the current Financial Year i.e. F.Y 2014-15 relevant to A.Y 2015-16 over and above our regular income in our group company

Sumeru Textiles P. Ltd, and abide by to pay the taxes within time.

.....

26.2 The above clearly suggests that the appellant has undertaken land transactions which were kept out of the books. The appellant declared an amount of Rs. 14.61 Crores on 27/12/2014 on account of such dealing and the said amount has been declared as business income in the ITR filed for A.Y. 2015-16. Therefore, the appellant's contention that he was not carrying any undisclosed land business and therefore was not required to maintain the books of accounts for such land business is factually incorrect. Since the appellant has kept his land business completely out of books, therefore, it is obviously difficult for the Assessing Officer to corroborate notings on the impounded documents with the books of accounts.

27. The last argument of the appellant is that the amount of Rs. 9,55,65,676/- should be considered as covered by the declaration of Rs. 41.25 Crores made in the hands of the assessee, his mother and the company namely M/s Sumeru Textiles Pvt. Limited. The said contention cannot be accepted because of following reasons:-

i) This contention of the appellant is quite general without filing any cash flow statement. In the absence of any cash flow statement showing cash receipts and payments, no such benefit as requested can be granted.

ii) The notings mentioned on impounded pages in annexure BI-1, BI-2 and BI-3 are not entirely payment entries and a large number of these entries correspond to receipt entries. Unaccounted cash receipt entries in above impounded documents, cannot be telescoped with additional income declared on the basis of cash receipts.

iii) From the statements recorded at the time of survey as well as post survey, it is seen that for cash received on account of sale of Gaviar land has already been telescoped by the appellant against cash payments (point no. 2 of reply to Q. No. 12 of the statement recorded on 27/12/2014 wherein an amount of Rs. 12.90 crores have already been telescoped against the declaration of Rs. 14.61 crores from Gavier Land, Surat. Thus, the telescoping as requested by the appellant cannot be granted.

In view of above discussion, the argument of the appellant that the amount of Rs. 9,55,65,676/- should be considered as covered by declaration of Rs. 41.25 Crores cannot be accepted and is hereby rejected.

28. In view of above discussion, impounded material, statement recorded during the survey and post survey investigation, detailed reasoning given by the Assessing Officer, I am of the considered opinion that the addition of Rs. 9,55,65,676/- has been validly made by the Assessing Officer. Accordingly, said addition is upheld. The **ground no. 1** raised by the appellant is **DISMISSED.**

9. Both the parties vehemently reiterate their respective stands during the course of hearing before us. Learned counsel more particularly argued that the impugned addition is not sustainable in law since not based on any supportive material found/seized during the course of survey.

10. Coming to the Revenue's cross-appeal ITA.No.1433/ PUN./2023, the assessee has further drawn strong support from the CIT(A)'s lower appellate findings accepting his sec.54F deduction claim amounting to Rs.11,44,21,118/- disallowed in the course of assessment framed on 29.12.2017. Learned counsel's case in otherwords is that the assessee is indeed entitled for claiming the foregoing deduction even *qua* on-money component as well which stands accepted by the CIT(A)as under :

29. The **grounds no. 2 and 3** raised by the appellant are regarding the action of the Assessing Officer in not treating the cash consideration of Rs. 11,44,21,118/- received by the appellant on transfer of land at Khambasala as part of sale consideration for the purpose of computation of long-term capital gain and therefore denying the deduction u/s 54F of the Act. Facts leading to said addition are that during the year under consideration, the appellant along with his mother transferred an agriculture land situated at B. No. 1,9 and 10, Khambasala. During the survey operation, documents were impounded indicating that the assessee had received a part of consideration in cash which was not forming part of registered sale deed. During the survey operation, the appellant admitted that he along with his mother received an amount of Rs. 12,49,00,000/- in cash which is not reflected in their books of accounts and accordingly this amount was declared as additional income. The corresponding portion of statement recorded on 27/12/2014 is reproduced as under:

Ans 12. .....

3. As regards Page no. 201 of loose paper folder i.e. annexure BI-1, I submit that the same relates to sale of 3 pieces of land situated at Revenue Survey No. 1 (admeasuring 42541 Sq. Mtrs),9 (admeasuring 24585 Sq.Mtrs) & 10 (admeasuring 29134 Sq. Mtrs.) for a total value of 25,69,46,3700/-. The land belongs to me and my mother Nutan J Shah and the share in sale is 62% and 38% respectively. Further I would like to submit that out of the total consideration as mentioned above, Rs. 12,49,00,000/- is received in cash and is not reflected in me and my mother's books of accounts. Accordingly, I disclose a sum of Rs. 4,74,62,000/- in the hands of my mother and remaining amount of Rs. 7,74,38,000/- in my hands as undisclosed income in the current F.Y. 2014-15 relevant to A.Y. 2015-16 over and above our regular income in the ratio proportionate to our total share in the sale consideration and abide to pay the taxes within time. I hereby also present before

you the confirmation letter signed and submitted by my mother.

Thereafter, the said declaration was increased to Rs. 18,45,50,190/- in the statement recorded on 02/02/2015, during the post-survey investigation. Out of this declaration, the additional income of Rs. 11,44,21,118/- belongs to the appellant and Rs. 7,01,29,072/- is corresponding to the share of appellant's mother Smt. Nutanben J. Shah.

30. While filing the return of income, the appellant declared his portion of this cash consideration of Rs. 11,44,21,118/- in the return of income in addition to the sale consideration received as per the registered sale deed amounting to Rs. 5,21,43,000/-. In this manner, the total sale consideration for transfer of agricultural land was shown at Rs. 16,65,64,118/- and accordingly LTCG was computed at Rs. 14,56,81,355/-. Against this LTCG, the appellant has claimed deduction u/s 54F of the Act amounting to Rs. 12,06,70,182/- on account of investment of Rs. 13,79,67,707/- in new residential house namely "Ananya Bunglow". Thus, the taxable LTCG was computed as under:-

Sale Consideration	Rs. 16,65,64,118/-
Less: Indexed Cost of Acquisition	Rs. 2,08,82,763/-
LTCG	Rs. 14,56,81,355/-
Investment in new residential house	Rs. 13,79,67,707/-
Exemption u/s 54F 14,56,81,355 x 13,79,67,707/ 16,65,64,118	Rs. 12,06,70,182
Taxable LTCG	Rs. 2,50,11,173/-

31.1 During the assessment proceedings, the Assessing Officer noticed that as per the registered sale deed, the full value of consideration is Rs. 5,21,43,000/-. Since, the cash amount of Rs. 11,44,21,118/- was not

considered as sale consideration in the registered sale deed, the LTCG could not have been computed by taking the sale consideration of Rs. 16,65,64,118/-. The Assessing Officer held that by adding the additional income disclosed during the survey to the sale consideration, the assessee has claimed excess deduction u/s 54F of the Act and the deduction u/s 54F can be allowed only by considering the sale consideration of Rs. 5,21,43,000/- only.

31.2 The Assessing Officer further held that the full value of consideration has not been defined in the Act and since the stamp duty has been paid only corresponding to consideration of Rs. 5,21,43,000/-, the said amount can only be considered for deduction u/s 54F of the Act.

31.3 The Assessing Officer did not accept the claim of the assessee that Rs. 11,44,21,118/- was received in cash on account of transfer of land by observing that no evidence is furnished by the assessee.

31.4 The Assessing Officer further relied on the decision in the case of ***Kishorekumar Chordia (HUF) vs ITO 79 taxman 110 (ITAT, Chennai)***, wherein it has been held that for the purpose of capital gains the value adopted by stamp valuation authority is required to be considered as full value of consideration.

31.5 Accordingly, the Assessing Officer worked out the LTCG on sale of land at Khambasala as under:-

Cost of acquisition	Rs. 1,44,99,653/-
Indexed cost of acquisition: 14499653/711 X 1024	Rs. 2,08,82,736/-
Sale consideration of land at Khambasala Less: Indexed cost	Rs. 5,21,43,000/- Rs. 2,08,82,763/-
LTCG	Rs. 3,12,60,237/-
Deduction u/s 54F	Rs. 3,12,60,237/-

New Asset cost: Rs. 13,79,67,707/5,21,43,000 X 3,12,60,237	
Taxable Capital Gain	Nil

31.6 In this manner, the Assessing Officer allowed deduction u/s 54F only to the extent of Rs. 3,12,60,237/- as against the claim of Rs. 12,06,70,182/-.

31.7 In the show cause notice, the Assessing Officer proposed to tax the additional income of Rs. 11,44,21,118/- (corresponding to cash consideration) as business income. However, while passing the assessment order, the Assessing Officer held the said income as taxable u/s 69 of the Act by observing as under:-

> *"18.4 The assessee's explanation is therefore not found satisfactory as the assessee has not maintained any books of accounts in individual capacity regarding the activities of dealing in immovable properties. The profit earned from these activities was never disclosed to the Income tax Department and never reflected in the return of income filed. It has been held by High Court Punjab and Haryana, in the case of Jogenderlal vs CIT 56 taxman 150 (P&H) (2015) that where assessee purchased a plot vide registered sale deed for certain consideration but during survey u/s 133A, vendor of plot declared higher consideration which remained unrebutted, amount of difference was added to assessee's income as unexplained income in plot u/s 69 and the court confirmed the impugned addition."*

Accordingly, the Assessing Officer restricted the deduction u/s 54F to an amount of Rs. 3,12,60,237/- and the cash considerationof Rs. 11,44,21,118/- was taxed as unexplained investment u/s 69 of the Act.

32.1 During the appellate proceedings, vide submission filed on 26/04/2023 on ITBA, the appellant has submitted as under:-

> *2.3 It is submitted that in the year under consideration, the assessee had sold agricultural land situated at Khambhasala, S. No - 1/1, S. No-4/9 and S. No - 5/10, Khambhasala, Tal. - Choryasi, Dist - Surat dated 14th October, 2014, vide*

document registration no - 116, 117 and 118 respectively at sales consideration of Rs. 16,65,64,118/- (As per sales deeds Rs. 5,21,43,000/- additional amount declared of Rs. 11,44,21,118/-) and the assessee had shown long term capital gain of Rs. 14,56,81,355/- Against long term capital gain of Rs. 14,56,81,355/-, the assessee has shown deduction u/s. 54F of the Act of Rs. 12,06,70,182/- in respect of new residential house purchased by the assessee at the cost of Rs. 13,79,67,707/- The copies of sale deeds and purchase deed of new asset were submitted to the AO during assessment proceedings.

The assessee had actually sold the property at a sale consideration of Rs. 16,65,64,118/- (assessee's share) However, the sale deed was executed for the value of Rs. 5,21,43,000/- (assessee's share) whereas, the assessee had admitted to have received additional sale consideration received by cash of Rs. 11,44,21,118/- during the course of survey proceedings vide reply to question No. 12 of statement recorded on 27.12.2014 and reply No. 3 of statement recorded on 02.02.2015 while giving explanation to the impounded papers bearing No. 43 and 205 to 208 of Annexure BI-1.

2.4 The assessee has claimed deduction u/s. 54F of the Act by fulfilling all the conditions as per the said section 54F as under

i) The assessee is an individual.

ii) The capital gain has arisen from the transfer of long-term capital assets. The assessee had purchased the above referred land on 27.01.2011, 03.03.2011, and 03.03.2011 and has sold the said land after a period of 3 years and therefore, the assets sold are long term capital assets.

iii) The capital gain has arisen on sale of agriculture land, which is not residential house.

iv) The assessee has purchased a residential house at Ananya Bunglow. S. No-1 & 4. Ward No-13, Nondh No 138, 139 & 140 paiki Plot No-28 & 29, T. P. Scheme No-5 (Athwa-Umara), F.P. 144, Moje Athwa, Surat, Gujarat.

v) The cost of new asset is less than net sales consideration of the original assets and hence, proportionate deduction of Rs. 12,06,70,182/- is claimed as per section 54F (1) of the Act.

vi) As on date of transfer of the impugned agricultural land sold, the assessee was the owner of only one residential house at 10, AnjanShalakha Complex, Athwalines, Surat-395007.

vii) The assessee has not purchased any other residential house other than new asset within a period of 1 year after the date of transfer of the impugned land.

viii) The assessee has not constructed any other residential house other than the new asset till date.

2.5 The assessee had rightly shown the capital gain of Rs. 14,56,61,355/- (before deduction u/s. 54F) as the assessee had sold agricultural land, held by him as capital asset since January/March 2011 on the basis of document value as well a additional sale consideration received by cash which was declared by him as his additional gain during survey proceedings on the basis of credible evidences and material found during survey proceedings. It is an undisputed fact that the material and contents reflected on impounded papers clearly indicated the fact that the assessee had received part sale consideration of land by cheque and part by cash. Accordingly, the assessee admitted and disclosed the transaction of capital gain on the basis of the gain earned by him on total sale consideration. All these evidences suggested the sale of capital asset and there was no evidence to suggest that the assessee has done any business activity.

2.6 It is respectfully submitted that the land in question was agriculture land hold by the assessee and his mother since last more than 3 years and the assessee has never done any business activity of dealing in land in past. The assessee had held land for more than 3 years also clearly indicated the fact and intention of the assessee that the said asset was held as investment in capital asset. The evidences found also clearly indicated that the assessee had earned income in the nature of capital gain. Moreover, the impugned land was an agricultural land which can be sold to an agriculturist only and the said land cannot be used for non-agriculture purpose and no business activities of plotting or construction etc. can be made without getting it converted it into non agriculture land by obtaining permission for Government of Gujarat and also by paying very high amount of premium for such permission. The assessee had purchased the agriculture land and had sold the same as agricultural land only and no business activities were carried out and the same is not permissible even as discussed above. Therefore, the intention of the assessee was very much clear to hold it as an investment and not as a business asset. Moreover, the past tracks of records of earlier years' assessment also clearly proved that the assessee was never engaged with land dealing business activities.

Right from the day of survey the assessee has clearly confessed that he had received part consideration of land in cash and the same was declared as additional income during the course of survey proceeding. It is further submitted that the assessee had sold the impugned land and earned long term capital gain. Merely the fact that the additional income disclosedduring the course of survey, the character of income does not change. The character of income i.e. long term capital gain remains the same more particularly when the evidences found during survey proceeding clearly indicated the transaction of long term capital gain. It is clear that the Act does not envisage taxing any income under any head not specified in section 14 of the Act. The income should be classified and taxed under the specific head and the evidences in the case of the assessee clearly suggested that the

assessee had earned the income from long term capital gain and not business income. The assessee had held the said land as his investment in immovable property and the same was sold after more than a period of 3 years which clearly indicates the fact that there is no business activity and hence, the assessee has rightly offered the gain of Rs. 14,56,61,355/- as long-term capital gain. There are no evidences on record to suggest that the assessee has earned the said income as business income.

32.2 The appellant has also relied on the following case laws:-

- CIT vs D.P. Sandhu Bros. Chembur Pvt. Ltd. 193 CTR 578 (SC).
- CIT vs Shilpa Dyeing and Printing Mills 219 taxmann 279 (Gujarat High Court),
- Shri Manish Madhav Malpani (ITA No. 1090/PN/2013).

33. Regarding the applicability of sec. 69 of the Act, the appellant has submitted as under:-

1.1 It is respectfully submitted that as discussed elaborately in Ground No. 2, hereinabove, the assessee had rightly offered the income on capital gain on sale of land at Khambhasala on total sale consideration of Rs. 16,65,64,118/- (assessee's share) which included the cash consideration received of Rs. 11,44,21,118/-. Therefore, the action of the learned assessing officer in treating the additional income of Rs. 11,44,21,118/- u/s. 69 of the Act and charging it to tax u/s 115BBE instead of treating it as Long-Term Capital Gain is totally unreasonable and unjustifiable.

1.2 It is respectfully submitted that in the case of the assessee, the credible evidences were found showing the fact that the assessee had sold the land at Rs. 16,65,64,118/- whereas the document value was only Rs: 5,21,43,000/-. Therefore, on the basis of the said evidence, the assessee had admitted to have earned capital gain on sale of land on sale value of Rs. 16,65,64,118/- and offered the same as long term capital gain while filing the return of income. The assessee had by categorical declaration explained the source of the said income and accordingly, offered the same in the return of income. Therefore, there was no question of considering the sale value of the property at Rs. 5,21,43,000/- which was reflected in the registered sale deed. The assessee had offered the additional income as long term capital gain and therefore, there was no question of treating the said income as income from unexplained investment within the meaning of section 69 of the Act. The assessee had made investment in the said land in earlier year and the purchase transaction was made by cheque and therefore, there was no question of treating the same as income from unexplained investment u/s. 69 of the Act

1.3 It is respectfully submitted that the learned assessing officer, himself in Para

18.2 admitted that the Page No 43, 205 to 208 of Annexure Bi-1 are the loose papers on which the working is reflected. Therefore, the action of the learned AO itself is contradictory in stating that it is an unexplained transaction of income. The learned AO stated that the cash consideration received of Rs. 11,44,21,118/- is not reflected in the sale deed. This argument of the learned AO is baseless in as much as the additional cash consideration in any transaction would obviously not appear in the sale deed presented for registration. However, on the said papers, full working of document price and additional consideration are mentioned and accordingly, the assessee had explained the transaction and admitted the additional gain on sale of impugned land while giving his statement. Accordingly, the assessee had shown the capital gain in his return of income also. Therefore, is no case of undisclosed income of the assessee.

1.4 The learned AO, wrongly stated that the amount of additional income declared of Rs. 11,44,21,118/- is income from unexplained investment within the meaning of the provisions of section 69 of the Act. It is not a case of unexplained investment by the assessee in the year under consideration in as much as the assessee had purchased the said land in 2011 and the purchase consideration was paid by cheque and the same was discussed during the assessment proceedings of the relevant year and accepted by the Department. So, the question of invoking section 69 does not arise in this case.

1.5 The observation of the learned AO in Para 18.4 of not maintaining books of accounts in individual capacity is also baseless in as much as the assessee is carrying on the business of running a petrol pump and the books of accounts of the said business are maintained and are audited u/s. 44AB of the Act. It is not mandatory to maintain personal books of accounts for the assessee in respect of his other personal income and transactions. The assessee had fully disclosed all his business income as well as other income in earlier years' returns of income. The case law cited by the learned AO of Joginder Lal Vs. CIT [56 Taxman 150- P&H] is totally irrelevant as it was related to the income for purchase of plot by the said person which was unaccounted whereas in the case of the assessee, he had sold the plot in the year under consideration and income from LTCG on the said transaction was shown in the return of income filed by him.

1.6 In Para 18.8, the learned AO stated that no evidence have been furnished by the assessee of receipt of cash by him. Infact, the impounded papers were clear evidences of land transaction and the sale deed also indicated the persons from whom the amount was received. Therefore, it is not a case that the details of source of money received was not available and the assessee had categorically admitted to have received the additional cash on the basis of the said evidences, which was offered as income by him during the survey proceedings as well as in the return of income filed by the assessee and therefore, it is not a case of any unexplained transaction and hence, the question of invoking provisions of section 115BBE does not arise.

Considering the above discussion, we request your Honour to allow the appeal of the assessee and oblige.

Findings

34. I have considered the facts of the case and the submissions made by the appellant. As explained earlier in this order, during the survey proceedings, certain documents relating to sale of land situated at Village Khambasala were found as page no. 43and page no. 208, Annexure BI-1. These pages are written in Gujarati language. During the appellate proceedings, the appellant has submitted the English translated version of both these documents which are reproduced as under:

ANNEXURE "BI-1" - PAGE NO. 43

#Shri Ganeshla Namah#

30.01.2013

Details of Land - Village Khambhasala Block No. 1 – 44920meter

Block No. 9 - 24585 meter

i.e. Total 37.69 Vingha Land

Block No. 10 - 20134 meter

Purchaser of land - KishorbhaiBharatsinh Solanki Godadara

Ghambhirsinhbhai Dodiya Godadara

Seller of land - Jagdishbhai M. Shah

Mitulbhai J. Shah

Details of the deal - This amount agreed of the deal of the above stated land was Rs. 73,51,000/- (Rupees Seventy-three lakhs fifty-one thousand only) per vingha - period of land deal — given Rs. 11,00,000/- as a token/Part payment and thereafter - will have to pay Rs. 69,264/- at 25% within 45 to 60 days - Thereafter, the payment to be made in six months monthly equal installments and the document will got to be executed by the purchaser party.

Signature of the sellers *Signature of the purchasers*

Sd/- Jagdish M. Shah *Sd/- KishorbhaiBharatsinh Solanki*

Sd/- Mitul J. Shah Ghambhirsinhbhai N. Dodhiya

ANNEXURE "BI-1" - PAGE NO. 208

Details of the accounts (Hisab)

Total Meter = 89639 / 2378

Total Vinghas = 37.69 - 1 = 36.69X 7351

26,97,08,190

Details of Payment -30,00,000

26,67,08,190

12,49,000/- - By cash

7,49,000/- - By cheque

1,00,00,000/- - 15.09.14

2,00,00,000/- - 24.09.14

1,00,00,000/- - 25.09.14

1,00,00,000/- - 30.09.14

2,33,46,370/- - by cheque

20,31,46,370/-

1,62,00,000/- - Return from Mitulbhai

15,69,46,370/-

8,28,980/- of TDS

15,77,75,350/-

1,67,08,190/-

89,32,840/- Balance/Remaining Amount

22,600 22,600 Ch outstanding

8,955 on 14.10.14

35. It can be seen from page no. 43 of Bundle No. BI-1, that the agreed price of agriculture land was Rs. 73,51,000/- per Vingha. The details of payments are mentioned at page no. 208 as per which total amount to be received by the appellant and his mother was Rs. 26,97,08,190/-. There is no dispute on the fact that the total sale consideration received through banking channels by both the co-owners, is Rs. 8,51,58,000/- which also found recorded at impounded page no. 206. The share of the appellant in the amount paid through banking channels, as mentioned on this impounded page no. 206 is Rs. 5,16,21,570/- and the balance amount of Rs. 3,26,84,850/- was paid to his mother Smt. Nutan Shah. The cash amount of this transaction as per impounded page no. 208 of Bundle No. BI-1 comes to Rs. 18,45,50,190/-. The appellant has submitted that share of the appellant in the said agriculture land is 61.23% and share of his mother is 38.77%. Accordingly, this cash component of Rs. 18,45,50,190/-, was bifurcated during the survey operation and accordingly Rs. 11,44,21,118/- was declared in the hands of the appellant and Rs. 7,01,29,072/- was declared in the hands of his mother. The relevant portion of the statements recorded during the survey as well as post survey have already been reproduced earlier in this order.

36. Thus, the impounded documents clearly suggest that this additional income of Rs. 11,44,21,118/- was on account of sale consideration received in

cash on transfer of land situated at Khambasala which was over and above the sale consideration as per registered sale deed. In such situation, observation of the Assessing Officer that the appellant has not filed any evidence to suggest that the said additional income was on account of sale consideration of transfer of land is factually incorrect because the said documents were found and impounded during the survey itself and were available to the Assessing Officer at the time of the assessment. It is also seen that the appellant right from the day of survey has maintained his stand that the said amount of Rs. 11,44,21,118/- was received as sale consideration of land and same has been stated by him in various statements recorded during survey and post survey proceedings.

37. It is also a well settled legal position that when a document had to be relied, it must be relied upon in whole. One cannot accept part of document and reject other part.In this connection, reliance is placed on following decisions:-

i) In the case of ***Glass Lines Equipments Co. Ltd. v. Commissioner of Income-tax 119 TAXMAN 813 (Guj),*** the Hon'ble High court of Gujarat has held

> *9. In view of the settled legal position, it was not open to either Commissioner (Appeals) or the Tribunal to ignore a part of the contents of the affidavit. We are conscious of the fact that the findings recorded by the Commissioner (Appeals) and the Tribunal are concurrent as regards the facts and evidence on record and but for the averments made in the affidavit which have been ignored, we would not have interfered with the said findings.* ***It is well-settled cannon of interpretation that a document has to be read as a whole: it is not permissible to accept a part and ignore the rest of the document.***
>
> (Emphasis supplied)

ii) In another case of **Navjivan Oil Mills *v.*Commissioner of Income-tax 124 Taxman 392 (Gujarat),** the Hon'ble High Court of Gujarat has held

> *13. It is settled legal position that the seized material has to be read and accepted as a whole and it is not permissible to pick and choose or make further estimates therefrom unless and until there is cogent material in support of undertaking such an exercise.....*

iii) In the case of **DCIT, CC– 23 *v.* Kanakia Hospitality (P.) Ltd.**

[2019] 110 taxmann.com 4 (Mumbai - Trib.), the Tribunal has held that

> *Section 292C of the Act clearly envisages a presumption that where any books of account or other documents are found in the possession or control of any person in the course of a search conducted under section 132 it may, in any proceeding under this Act, be presumed, that the contents of such books of account and other documents are true. In the absence of any material proving to the contrary the contents thereof have to be accepted as such.*

The Hon'ble Tribunal has further held *that the contents of a 'seized document' are to be read in toto, and it is not permissible on the part of an Assessing Officer to dissect the same and therein summarily accept the same in part and reject the other part.*

iv) In the case of **Raj Homes S.V. Grup&Anr Vs. DCIT ITA No. 2707/Mum/2017, 2408/Mum/2017,** the Hon'ble Tribunal held that *'when a document had to be relied, it must be relied upon in whole. One cannot accept part of document and reject other part.*

38. In the present case, the impounded documents suggest that the appellant has received cash consideration on sale of land which is over and above the sale consideration mentioned in the registered sale-deeds. The appellant has also accepted the same and declared additional income of Rs. 11,44 21,118/-. Therefore, it is not open to the assessing officer to accept the additional income as found recorded in the impounded documents but to hold that the said income was not received on sale of land.

39. It is also a well settled legal position that the heads of income provided for in the sections of the Indian Income-tax Act are mutually exclusive and where any item of income falls specifically under one head, it has to be charged under that head and no other. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in the case of **CIT vsD.P. Sandu Bros. Chembur (P.) Ltd. 142 Taxman 713 (SC).** The relevant portion of this judgement is as under:

> ***13.** Were it not for the inability to compute the cost of acquisition under section 48, there is, as we have said, no doubt that a monthly tenancy or leasehold right is a capital asset and that the amount receipt on its surrender was a capital receipt. But because we have held that section 45 cannot be applied, it is not open to the Department to impose tax on such capital receipt by the assessee under any other section. This Court, as early as in 1957 had, in United Commercial Bank Ltd. v. CIT [1957] 32 ITR 688 (SC), held that the heads of income provided for in the sections*

of the Indian Income-tax Act, 1922 are mutually exclusive and where any item of income falls specifically under one head, it has to be charged under that head and no other. In other words, income derived from different sources falling under a specific head has to be computed for the purposes of taxation in the manner provided by the appropriate section and no other. It has been further held by this Court in East India Housing & Land Development Trust Ltd. v. CIT [1961] 42 ITR 49 that if the income from a sourcefall within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head. [CIT v. Chugandas& Co. [1964] 55 ITR 17 (SC)].

40. Thus, what is important to see is the character of income. In the present case, the cash consideration was received by the appellant on account of transfer of land and merely because the said cash consideration is over and above the consideration mentioned in the registered sale-deed, it will not change the character of these cash receiptsespecially when the evidences found during the survey clearly indicate that the said amount was received for transfer of land. Thus, the cash consideration of Rs. 11,44,21,118/- received by the appellant as found recorded in the impounded material and admitted by the appellant shall be taxable under the head 'Long Term capital Gain' and not u/s 69 of the Act, as done by the Assessing Officer.

41.1 Further, in the present case, the Assessing officer has taxed the amount of Rs. 11,44,21,118/- as deemed income u/s 69 of the Act. The section 69 of the Act reads as under:-

"Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year".

41.2 Thus, for invoking the provisions of section 69 of the Act, following conditions should be fulfilled:-

(i) The assessee has made investment in the financial year immediately preceding the assessment year.

(ii) Also, such investments are not recorded in the books of accounts, if any, maintained by him for any source of income.

(iii) Either the assessee unable to furnish explanation about the nature and source of the investments or the AO is in the opinion that the explanation offered by him is not satisfactory.

Unless all the above three conditions are fulfilled, the provisions of section 69 cannot be invoked.

42. In the present case, the assessing officer has not pointed out any investment corresponding to Rs. 11,44,21,118/- which was made by the appellant but not recorded in his books of accounts. In fact, as explained above, the amount of Rs. 11,44,21,118/- represents the unaccounted cash receipts on sale of agricultural land. Thus, the provisions of section 69 of the Act cannot be invoked firstly because; the said amount does not represent any investment and secondly, the source of said receipts have been satisfactorily explained. Accordingly, the assessing officer has erred in applying the provisions of section 69 of the Act.

43. It may also be mentioned that while applying the provisions of section 69 of the Act, the assessing officer has relied on the decision of Hon'ble Punjab & Haryana High Court in the case of ***Jogender Lal Vs CIT 56 Taxmann.com 150 (P&H HC)***. The facts in this case were that the assessee bought a plot for Rs. 3.70 lakhs. However, a survey u/s 133A was carried on the seller and the seller admitted a sale consideration of Rs. 38 lakhs and accordingly, revised his return of income. Considering these facts, the Hon'ble Court held that the difference in the sale consideration admitted by the seller and the sale consideration mentioned in the sale-deed shall be taxable as unexplained investment in the hands of buyer, u/s 69 of the Act. However, in the case in hand, the appellant is a seller and therefore, the said case-law shall not be applicable in the hands of the appellant.

44. The next issue involved in this appeal is as to whether the appellant can claim deduction u/s 54F of the Act on the cash consideration which is over and above the consideration mentioned in the registered sale-deed. A similar situation has been dealt by the jurisdictional Tribunal in the case of **Shri Manish Madhav Malpani (ITA No. 1090/PN/2013) (Pune Tribunal)**, wherein, the Hon'ble Tribunal has allowed the deduction u/s 54F on the undisclosed cash consideration received on transfer of immovable property. The relevant part of this decision is as under:-

8. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that during the course of search documents relating to sale of land was found from the business cum residential premises of the assessee according to which assessee has received an amount of Rs.15,20,000/- in cash and Rs.16 lakhs in cheque being 40% share of his holding in the landed property. Although the assessee has filed his original return of income on 28-09-2009, however, no capital gain on account of such sale of land was declared in the original return. The assessee in the return filed in response to notice u/s.153A declared the long-term capital gain and simultaneously claimed deduction of Rs.31,20,000/- u/s.54F on account of purchase of a flat. It is the case of the revenue that since the proceedings u/s.153A are akin to the provisions of section 147, i.e. reassessment proceedings, therefore, the assessee cannot make a new claim which was not there in the original return of income. According to the revenue since the reopening of assessment could only be for the benefit of revenue, therefore, the assessee could not claim deduction which was neither claimed nor allowed in the original assessment proceedings. It is the submission of the Ld. Counsel for the assessee that the provisions of section 153A are different from the provisions of section 147 and the assessee can make a new claim in the pending assessment which has not abated. Since the assessee otherwise fulfils the conditions prescribed u/s.54F, therefore, the allowable benefit which otherwise is available to the assessee cannot be denied on technical grounds.

9. The payment of Rs.58,50,000/- by cheque dated 20-09- 2008 by the assessee towards booking of duplex at the project Castel Royal Magnifique at Bopodi is not in dispute. It is also not in dispute that the agreed value of the duplex is Rs.5,99,47,500/-. The only dispute is regarding the allowability of the claim u/s.54F out of the additional income declared during the course of search being sale proceeds of landed property.

10. In the case of Malpani Estates (Supra) the assessee was a partnership firm engaged in construction business which was subject to a search action u/s.132(1) of the Act. During the course of search, certain undisclosed income in relation to the housing project undertaken by the assessee firm was admitted by the partner of the assessee firm. The assessee reflected such additional income in the return of income filed as profits from its housing project which was eligible for deduction u/s.80IB(10) of the Act and claimed such deduction u/s.80IB(10) of the Act in relation to such additional income. The claim of the assessee was denied by the Assessing Officer which was upheld by the CIT(A). On further appeal the Tribunal allowed the claim of the assessee u/s.80IB(10) in respect of the additional income declared during the course of search by observing as under:

> *"12. Now, coming to the point as to whether such 'business income' qualifies to be eligible for deduction u/s 80IB(10) of the Act in the course of an assessment made u/s 153A(1)(b) of the*

Act. On this aspect, the learned Departmental Representative submitted that the assessment in cases of search action or requisition are made u/s 153A or 153C of the Act in order to assess undeclared incomes and such provisions are for the benefit of the Revenue and therefore a claim u/s 80IB(10) of the Act cannot be considered in such proceedings, especially when such a claim was not made in the return of income originally filed under section 139 of the Act. In this regard, the learned Departmental Representative has referred to the judgment of the Hon'ble Supreme Court in the case of CIT vs. Sun Engineering Works Pvt. Ltd., 198 ITR 297 (SC) to point out that even in the cases of re-assessment u/s 147/148 of the Act fresh claims cannot be raised by the assessee. Secondly, it is pointed out by the learned Departmental Representative that even if the claim was to be considered then it was not allowable because the requisite condition that the return of income has to be accompanied by the prescribed audit report has not been complied with by the assessee. On the basis of aforesaid reasons, the claim of the assessee has been opposed.

13. Sections 153A to 153C of the Act contain provisions relating to assessments to be made in cases where search is initiated u/s 132 or a requisition is made u/s 132A of the Act after 31st May, 2003. Clause (b) of sub-section (1) of section 153A postulates assessment or re-assessment of total income of six assessment years preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Short of other details, it would suffice for us to notice clause (i) of the Explanation below section 153A(2) of the Act, which reads as under:- "Explanation. - For the removal of doubts, it is hereby declared that, (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section."

14. In terms of the above referred clause (i) of the Explanation, it is evident that all the provisions of the Act shall apply to an assessment made u/s 153A of the Act save as otherwise provided in the said section, or in section 153B or section 153C of the Act. In the background of the expression "all other provisions of this Act shall apply" contained in Explanation (i) below section 153A of the Act, and in the context of the controversy before us, the moot point to be examined is as to whether or not deductions enumerated in Chapter VIA of the Act are to be considered in making an assessment made u/s 153A(1)(b) of the Act. Section 153A(1)(b) of the Act requires the Assessing Officer to assess or reassess the 'total income' of the assessment years specified therein. Ostensibly, section 80A(1) of the Act prescribes that in computing the 'total income' of an assessee, there shall be allowed from his 'total income' the deductions specified in Chapter VIA of the Act. The moot point is as to whether the aforestated position prevails in an assessment made u/s 153A(1)(b) or not? In our considered opinion, having regard to the expression "all other provisions of this Act shall apply to the assessment made under this section" in Explanation (i) of section 153A of the Act, it clearly implies that in assessing or reassessing the 'total income' for the assessment years specified in section 153A(1)(b) of the Act, the import of section 80A(1) of the Act comes into play, and there shall be allowed the deductions specified in Chapter VIA of the Act, of course subject to fulfillment of the respective conditions. Therefore, we are unable to subscribe to the stand of the CIT(A) to the effect that the benefits of Chapter VIA of the Act, which inter-alia include section 80IB(10) of the Act, are not applicable to an assessment made under sections 153A to 153C of the Act. In our considered opinion, the phraseology A.Ys. 2008-09 to 2010-11 of section 153A r.w. Explanation (i) as noted above, does not support the premise arrived at by the CIT(A) and accordingly, the same is rejected. Therefore, assessee's claim for deduction u/s 80IB(10) of the Act even with regard to the enhanced income was well within the scope and ambit of an assessment u/s 153A(1)(b) of the Act and the Assessing Officer was obligated to consider the same as per law.

15. . . . . .

16. The argument set-up by the learned Departmental Representative on the basis of the

judgment of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (supra), in our view, is also untenable having regard to the facts of the present case. No doubt the Hon'ble Supreme Court has observed that reopening of an assessment u/s 147/148 is for the benefit of the Revenue. In the case before the Hon'ble Supreme Court, assessee wanted to set-off loss against the escaped income which was taxed in the re- assessment proceedings and the claim of such set-off was not made in the return of income originally filed. According to the Hon'ble Supreme Court, the claim was not entertainable because the said claim not connected with the assessment of escaped income. In-fact, the judgment of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (supra) is not an authority to say that assessee cannot raise a claim pertaining to an issue which is connected to the assessment of escaped income. In-fact, if a claim which is connected to the escaped income is set-up before the Assessing Officer in the course of re-assessment proceedings, the same is liable to be considered and the judgment of the Hon'ble Supreme Court in the case of Sun A.Ys. 2008-09 to 2010-11 Engineering Works Pvt. Ltd. (supra) only precludes such new claims by the assessee which are unconnected with the assessment of escaped income. In the present case, we are dealing with an assessment u/s 153A of the Act and the scope of such an assessment has already been examined by us in the context of the relevant specific provisions, which do not leave any scope for ambiguity. The judgment of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (supra) has been rendered on a different footing and is strictly not applicable to the present proceedings. So, however, even if one were to import the reasoning raised by the learned Departmental Representative based on the judgment of the Hon'ble Supreme Court, to the present case, yet we do not find that it would debar the assessee from claiming deduction u/s 80IB(10) of the Act on the impugned additional income declared in the return filed in response to notice u/s 153A(1)(a) of the Act. In the present case, the claim of deduction u/s 80IB(10) of the Act was made in the return of income originally filed and in the return filed in pursuance to the notice u/s 153A(1)(a) of the Act, the claim u/s 80IB(10) of the Act is only enhanced and therefore, it is not a fresh claim. Therefore, in our view, the judgment of the Hon'ble Supreme Court in the case of Sun Engineering Works Pvt. Ltd. (supra) does not help the Revenue in the present case."

11. We find the Pune Bench of the Tribunal in the case of B.G. Shirke Construction (Supra) has held as under:

"12. Now, in so far as the assessments for assessment years 2007-08 and 2008-09 are concerned, the original assessments were pending on the date of initiation of search, and the same stand abated in terms of the second proviso to section 153A(1) of the Act. Following the reasoning laid down in the case of All Cargo Global Logistics Ltd. (supra), in so far as assessment years 2007-08 and 2008-09 are concerned, the Assessing officer retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A of the Act. In this context, the preliminary issue is as to whether the scope of assessments u/s 153A(1)(b) of the Act for assessment years 2007-08 and 2008-09 can include consideration of assessee's plea to exclude income on account of retention money, considering the fact the returns of income filed by the assessee for assessment years 2007-08 and 2008-09 u/s 139(1) of the Act did not contain any such claim. In the assessments u/s 153A(1)(b) of the Act, assessee claimed that income on account of retention money be excluded in the years when the customers had withheld the retention money and instead tax it in the year of its actual receipt. No doubt, the said claim does not pertain A.Y. 2003-04, 2006-07, 2007-08 & 2008-09 to any incriminating material found in the course of search, so however, on account of the fact that the Assessing Officer retains his original jurisdiction as well in the assessments for the years 2007-08 and 2008-09 to be made u/s 153A(1)(b) of the Act. In our considered opinion, as the following discussion would so, such a claim though made for the first time in the impugned assessment proceeding, would fall within the ambit and scope of impugned assessment carried out u/s 153A(1)(b) of the Act. Pertinently, the original jurisdiction vested with the Assessing Officer for the assessment years 2007- 08 and 2008-09 empowers him to consider the impugned claim,

and, to put it in other words, assessee was competent to raise such a fresh claim in the context of the original jurisdiction vested with the Assessing Officer, though it was not raised in the returns of income originally filed.

13. We may also consider this from another angle. As on the date of initiation of search i.e. 18-12-2006, the returns of income filed by assessee u/s 139(1) of the Act for assessment years 2007- 08 and 2008-09 were pending for assessment and the impugned claimed was not made in the returns of income originally filed. So, however, u/s 139(5) of the Act, assessee was competent to furnish a revised return and make such a claim, and thus the Assessing Officer was required to entertain such a claim in the course of exercising his original jurisdiction to make an assessment u/s 143(3) of the Act. Now, consequent to search action, for assessment years 2007-08 and 2008-09, Assessing Officer not only acquires jurisdiction to make additions based on the incriminating material but also retains the original jurisdiction, as explained by the Special Bench of Tribunal in the case All Cargo Global Logistics Ltd. (supra). Thus, the ensuing assessments u/s 153A(1)(b)of the Act for assessment years 2007-08 and 2008-09 would enable the Assessing Officer to consider the impugned claim which has been justifiably made by the assessee. Considering the entirety of circumstances and in law, we, therefore, hold that in so far as the assessments for the assessment years A.Y. 2003-04, 2006-07, 2007- 08 & 2008-09 2007-08 and 2008-09 are concerned, the income-tax authorities erred in not entertaining the impugned claim of the assessee merely because it was made in the course of an assessment u/s 153A(1)(b) of the Act and was not made in the returns of income originally filed u/s 139(1) of the Act."

12. In view of the decisions cited (Supra), we are of the considered opinion that the character of the income remains "long term capital gain" and the assessee can make a new claim in the pending assessment which has not abated. Since the assessee otherwise fulfils the conditions laid down in provisions of section 54F of the I.T. Act, therefore, we are of the considered opinion that the assessee is entitled to claim deduction u/s.54F to the extent of Rs.31,20,000/-. In this view of the matter, we set aside the order of the CIT(A) and allow the appeal filed by the assessee.

45. Further, the issue of allowability of deduction u/s 80IB(10) on the 'on-money' discovered during the search operation has been a subject matter of examination of various Courts/Tribunals. Some of these case laws are as under:

45.1 CIT vs. Sheth Developers (P) Ltd. 25 Taxmann.com 173 (Bombay HC) wherein the Hon. Bombay High Court has held that builders receiving undisclosed income in course of its business are entitled to benefit of deduction u/s 80IB of the Act.

45.2 CIT vs. Mandavi Builders 121 Taxmann.com 36 (2020) (Karn. HC) wherein the Hon. Karnataka High Court has held that where unaccounted money found during search proceedings at premises of assessee company, engaged in business of building and developing housing project, was treated

as business income of assessee by Assessing Officer, assessee could not be denied deduction u/s 80IB(10) in respect of such amount.

45.3 Madhav Corporation vs. ACIT 85 Taxmann.com 238 (Ahmd. Tribunal) wherein it has been held that deduction u/s 80IB is available in respect of on-money receipt detected consequent to search.

45.4 Malpani Estates vs. ACIT 44 Taxmann.com 242 (Pune Tribunal) wherein it has been held that the additional income pertaining to a housing project which was offered in a statement u/s 132(4) in course of a search and subsequently declared in the return filed u/s 153A of the Act will be eligible for deduction u/s 80IB(10) of the Act.

46. Thus, the Courts including the jurisdictional Court as well as jurisdictional Tribunal have laid down a proposition that if any unaccounted cash income is discovered during the search and if the assessee is otherwise eligible for deduction u/s 54F or 80IB(10) on such income, the deduction cannot be denied merely because such cash income was initially not accounted in the books of accounts.

47. In the present case, the only reason for which the assessing officer restricted the claim of deduction u/s 54F, is that the cash consideration of Rs. 11,44,21,118/-, is over and above the consideration mentioned in the sale-deed. The assessing officer has, however, allowed the deduction u/s 54F of the Act to the appellant for the consideration mentioned in the sale-deed. This suggests that the appellant is otherwise eligible for deduction under section 54F of the Act. Accordingly, following the above discussed case-laws, it is held that the appellant is eligible for claiming deduction u/s 54F on the sale consideration corresponding to cash consideration of Rs. 11,44,21,118/- also. The assessing officer is accordingly directed to recompute the deduction u/s 54F of the Act by including the amount of Rs. 11,44,21,118/- in the total sale consideration.

48. While restricting the deduction u/s 54F of the Act, the assessing officer has relied upon the decision of Hon'ble ITAT Chennai bench in the case of **Kishore Kumar Chordia (HUF) 79 Taxmann.com 110 (Chennai Tribunal).**I have perused this decision and find that in this case, the assessee sold the property for a consideration of Rs. 24.15 lakhs against the value of Rs. 30.19 lakhs by stamp valuing authority and in this context, the Hon'ble Tribunal held

that the provisions of section 50C of the Act shall be applicable and capital gains should be computed by taking the value adopted by the stamp valuation authorities. However, the facts of case in hand are entirely different and therefore, the reliance of Ld. Assessing Officer on the decision of *Kishore Kumar Chordia (HUF) (supra)* is misplaced.

49. In view of above discussion, it is held that the amount of Rs. 11,44,21,118/- is a part of sale consideration of the agricultural land sold by the appellant and the assessing officer has erred in holding that these cash receipts are taxable u/s 69 of the Act. Further, in view of the case-laws discussed above including the decisions of jurisdictional High court and jurisdictional Tribunal, it is held that the appellant is eligible for claiming deduction u/s 54F on the sale consideration corresponding to cash consideration of Rs. 11,44,21,118/- also. The assessing officer is accordingly directed to recompute the deduction u/s 54F of the Act by including the amount of Rs. 11,44,21,118/- in the total sale consideration. The grounds no. 2 and 3 raised by the appellant are disposed accordingly.

11. We make it clear before proceeding further that the Revenue's cross-appeal ITA.No.1433/PUN./2023 herein raises it's sole substantive ground that the Assessing Officer had rightly disallowed the assessee's sec.54F deduction claim in the foregoing terms.

12. It is in this factual backdrop that we first of all deal with assessee's appeal ITA.No.1339/PUN./2023. Both the parties are very much *ad idem* during the course of hearing that the learned lower authorities have made addition of Rs.9,55,65,676/- in assessee's hands based on the relevant entries made in the seized material coupled with his post-survey sec.131 statement(s). Mr. Shah claims at the same time that the assessee's multiple post-survey statement(s); be it u/s.131 or 133 of the Act, as the case may be, had declared varying sum(s) which stood duly honoured upto Rs.41,25,12,846/- since the dispute is only *qua* the impugned "retraction" sum of Rs.9,55,65,676/- herein. He has further filed the assessee's written submissions as follows :-

May It Please To Your Honour

1. The cross appeals are directed against the order of CIT(Appeals), Pune-11, dated 30.10.2023. In the assessee's and in the Revenue's appeal, the grounds have been raised as per appeal memos filed by the assessee and the Revenue.

Assessee's Appeal No. 1339/PUN/2023

2. The assessee's appeal is directed against the confirmation of addition of Rs. 9,55,65,675/- made on the basis of alleged seized materials, on the admission made by the assessee, qua the survey conducted in the case of M/s. Sumeru Textiles Pvt. Ltd.

3. **Addition on account of retraction of disclosure of Rs. 9,55,65,676/- :**

Facts :

4. The facts have been described in detail at Para Nos. 3 to 12 of the submission dated 31.07.2024 filed earlier. The arguments have been given in detail in the earlier submission which are summarized by way of synopsis as under.

Arguments :

. The statements recorded on 26.12.2014 and 27.12.2014 were recorded u/s. 131 of the Act 1961, but in fact, they were to be treated as statement recorded u/s. 133A of the Act, as the statement u/s. 131 cannot be recorded as per the provisions of section 133A, unless the assessee does not co-operate in terms of sub section (6) of section 133A. Accordingly, the statement recorded u/s. 133A has been given colour of section 131. The statement recorded u/s. 133A cannot be said to be "Statement On Oath" and therefore, the admission made therein cannot be enforced in view of the following judgements of the courts.

- CIT vs. S Khader Khan Son [352 ITR 480 (SC)]
- CIT vs. S Khader Khan Son [300 ITR 157 (Madras HC)]
- Paul Mathews & Sons vs. CIT [263 ITR 101 (Kerala HC)]

7. In the statement recorded on 05.01.2015, the above disclosure of Rs. 42,00,32,656/- was confirmed by the assessee. However, in reply to Question No. 14 of the said statement recorded, the assessee clearly stated that the disclosure was made on the bird view of the papers and the transactions appearing thereon and he will submit his specific disclosure under this head, after obtaining Xerox copies of the papers and analyzing the same. Even in this statement recorded on 05.01.2015, the source and application of income was not identified in respect of Rs. 6,71,70,000/-.

8. The statements of assessee were recorded u/s. 131 on 05.01.2015 and on 02.02.2015, in connection with the survey proceedings carried out on 26.12.2014. Both these statements were recorded by the Income Tax Officer (Investigation), Shri D.D. Tekwani, who was not the Assessing Officer. The statement u/s. 131(1) can only be recorded by the Assessing Officer and therefore, both these statements are invalid.

9. In the statement recorded on 02.02.2015, assessee made declaration of Rs. 50,80,78,522/-, which included the amount of Rs. 9,5565,676/- as against the declaration of Rs. 6,71,70,000/- made earlier, for which the source of income or application of income was not identified. It is to be note that in this statement the assessee had increased the declaration from sale of land at Khambhasala from Rs. 12,49,00,000/- to Rs. 18,45,50,190/-. This increase in the declaration was duly honoured by the assessee. This shows the bona fide conduct of the assessee.

10. It was stated in the statement recorded on 02.02.2015, in the later part of his reply to Question No. 3 that, the assessee was not able to explain the transactions of Rs. 15,52,15,966/- of the papers impounded vide Annexures BI-1, BI-2 and BI-3. This amount included the further cash profit declared of Rs. 5,96,50,190/- of Khambhasala land. So the assessee made the balance declaration of Rs. 9,55,65,676/-, without identifying any source of income or application of income by way of investment

/ expenditure. It was clearly stated by the assessee in his reply to Question No. 3 that during the course of pagewise analysis of the papers and documents aggregating to 15,52,15,966/-, he does not remember the nature of these transactions, as most of these transactions are without any specific details, narration or dates etc.

11. As stated above, out of the amount of Rs. 15,52,15,966/-, the amount of Rs. 5,96,50,190/-pertains to the cash profit on sale of Khambhasala land and so, the remaining amount of Rs. 9,55,65,676/- is on account of dumb papers as explained in the reply to Question No. 3 of the statement recorded on 02.02.2015.

12. The Final declaration was made by the assessee vide letter dated 25.03.2017 addressed to the ACIT, Dhule Circle, Dhule, along with the application/asset of the amount of disclosure which was shown by all the three assessees in their returns of income filed u/s. 139(4) of the Act. This final declaration of Rs. 41,25,12,846/- broadly tallies with the declaration of Rs. 42,00,32,656/- made at the time of survey proceedings carried on 26.12.2014 and 27.12.2014. So in fact, the assessee did not retract the amount of declaration that was made in the spontaneous statement recorded at the time of the survey.

13. The assessee, did not include the income of Rs. 9,55,65,676/- in the return of income filed on 24.03.2017, u/s. 139(4) of the Act, for which further declaration was made in the statement recorded on 02.02.2015. The assessee filed a detailed letter vide letter dated 25.03.2017 explaining the retraction of Rs. 9,55,65,676/- before the Assessing Officer. The assessee did not pay any advance tax or self-assessment tax on the amount of Rs, 9,55,65,676/-. In this letter dated 25.03.2017, the assessee has given the details of the final declaration of Rs. 41,25,12,846/- along with the application/asset of the amount of disclosure.

14. In fact, during the course of survey, no unexplained asset or unexplained expenditure was found except the investment of Rs. 12,90,00,000/- in the land at Dumas. The total disclosure of Rs. 50,80,78,522/- was made but, for the declaration of Rs. 9,55,65,676/-, no corresponding source of income, or the application out of undisclosed income by way of unexplained investment or unexplained expenditure were found. So the assessee group did not deposit the cash in respect of declaration of Rs. 9,55,65,676/- into the bank account. The cash was deposited out of the other declaration of Rs. 41,25,12,846/-.

15. In the course of assessment proceedings and appellate proceedings before the CIT(Appeals), the assessee explained all the papers related to the retracted amount of Rs. 9,55,65,676/- and it was proved that they were dumb documents. At best, the amount of Rs. 9,55,65,676/- recorded in the

loose papers, represented the money in circulation out of specific disclosure of Rs. 14,61,32,656/- made on account of Gaviar land, Rs. 18,45,50,190/- made on account of Khambhasala land and Rs. 8,18,30,000/- made on account of the construction project of M/s. Sumeru Textiles Pvt. Ltd.

16. The Assessing Officer and even the CIT(Appeals) did not rebut the explanation of the assessee regarding these dumb documents. It is to be noted that in the course of survey, no unexplained investment, unexplained valuable or expenditure, as against the declaration of Rs. 41,25,12,846/- was found, except the investment in the Dumas Land of Rs. 12,90,00,000/-

17. It is to be noted that the Assessing Officer, in the show cause notice, as well as in the assessment order and even the CIT(Appeals), in the appellate order did not invoke any section concerning the source of income, by taxing the income of Rs. 9,55,65,676/- under any of the heads of section 14 of the I.T. Act. Even both the lower authorities did not tax the amount under the deeming sections of section 68 to 69D. Accordingly, the addition does not leg to stand. The Assessing Officer has not invoked section 115BBE of the Act. Even for invocation of section 115BBE of the Act, the addition should have been made u/s. 68 to 69D of the Act. Accordingly, the Assessing Officer, while making the addition, has erred in not invoking any provision of the Act and the CIT(Appeals) has erred in confirming the addition, without invoking any Provision of the Act.

18. The learned CIT(Appeals) has held that the assessee had already taken the telescoping of Rs. 12,90,00,000/- for investment in the land at Dumas, against the declaration of Rs. 14,61,32,656/- for Gaviar land. In fact, the assessee had made, not only the declaration against the Gaviar land for Rs. 14,61,32,656/-, but also against the Khambhasala land of Rs. 18,45,50,190/- and no corresponding asset was found against this disclosure. The assessee had deposited the cash out of the proceeds of sale of land at Khambhasala and therefore the disclosure of Rs. 9,55,65,676/-, being money in circulation out of other declaration, should be telescoped against the declaration of Rs. 18,45,50,190/- made against the sale of Khambhasala land.

19. The reliance made by the Assessing Officer in the case of Dr. S.C. Gupta [248 ITR 782] and Pullangode Rubber Produce Ltd. [91 ITR 81], on the contrary, supports the case of the assessee. The case laws cited by the learned Assessing Officer of Manharlal Kasturchand Choksi [61 ITR 55-AHD] and Kantilal C. Shah [14 Taxmann.com 108 (Ahd)] are in connection with the admission in the statement recorded u/s. 132(4) and are not applicable to the facts of the assessee's case in as much as, there was no search at the assessee's place and the statement was not recorded u/s. 132(4) of the Act. Further, the decision in the case of Manharlal Kasturchand Choksi (supra) was reversed by the Honourable Gujarat High Court in the case of Kailashben Manharlal Choksi vs. CIT [328 ITR

411]. Smt. Kailashben is the legal heir of Manharlal Kasturchand Choksi and so, the very judgment was reversed by the Honourable Gujarat High Court.

20. It is to be noted that the addition has been made in the case of the assessee on the basis of loose papers, impounded in the course of survey conducted on a third person viz., Sumeru Textiles Pvt. Ltd. The presumption available u/s. 132(4A) and 292C is applicable only to the person who is searched or surveyed. So in case of the assessee, this alleged presumption is not applicable. The Assessing Officer has failed to rebut the presumption that the alleged papers in relation to which the additions were made, belonged to the assessee. The reliance is placed on the following decisions of the Courts.

- CIT vs. Anil Khandewal [93 CCH 0042 (Del. HC)]
- CIT vs. S.M.S. Investment Corpn. Pvt. Ltd. [207 ITR 364 (Raj. HC)]

21. Even if it is assumed that section 292C is invoked, no addition can be made as the Assessing Officer could not link the documents with any unexplained asset or unexplained expenditure. The reliance is placed on the decision of the Honourable Calcutta High Court in the case of PCIT vs. Ajanta Footcare (India) Pvt. Ltd. [84 Taxmann.com 109].

22. It has been held by the Honourable Supreme Court in the case of Common Cause (A Registered Society) vs. UOI [(2017) 394 ITR 220] that, there has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances, pointing out that the particular third person, against whom the allegations have been levelled, was in fact involved in the matter or, he has done some act during that period, which may have co-relations with the random entries. Further, in this judgment, it was held that, loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34, so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries, which led to the investigation was quashed by this Court. In this case, reliance was placed on the judgment of the Honourable Supreme Court in the case of CBI vs. V.C. Shukla [(1998) 3 SCC 410].

23. It has been held in the cases of PCIT vs. Umesh Ishrani [108 taxmann.com 437 (Bom HC)], and CIT vs. Maulikkumar K. Shah [307 ITR 137 (Guj HC)] that, when the entries reflected in the loose papers are not corroborated with any other evidence on record, addition cannot be made.

24. In the case of the assessee, the Assessing Officer has made the addition on the basis of the surmises and conjectures. The CIT(Appeals) has also confirmed the addition on the basis of conjecture and

surmises on flimsy grounds. Such addition cannot be sustained on the basis of under mentioned decisions of the Honourable Supreme Court and High Court.

- Umacharan Shaw & Bros vs. CIT [(1973) 37 ITR 271 (SC)]
- Lalchand Bhagat Ambica Ram vs. CIT [(1959) 37 ITR 288 (SC)]
- Dhakeswari Cotton Mills Ltd. vs. CIT [(1954) 26 ITR 775 (SC)]
- CIT vs. Maulikkumar K. Shah [307 ITR 137 (Guj HC)]

25. The decisions relied on by the Learned CIT(Appeals) are distinguishable as explained in detail at Para No. 31 of the submission dated 31.07.2024 filed earlier.

26. The written submission dated 03.07.2024, made by the Learned CIT (DR) were rebutted vide detailed arguments made in in Para Nos. 32 to 39 of the assessee's written submission dated 31.07.2024.

Revenue's Appeal No. 1433/PUN/2023

27. The Revenue's appeal is directed against the allowance of deduction u/s. 54 of the Act by treating the cash component received on sale of land as "Income From Capital Gain", as against the income taxed by the Assessing Officer u/s. 69 of the Act and thereby taxing the same u/s. 115BBE of the Act.

Disallowance of claim of deduction u/s. 54F of the Act by taxing the Income from Capital Gain u/s. 69 and 115BBE of the Act.

Facts :

28. The facts have been described in detail at Para Nos. 41 to 44 of the submission dated 31.07.2024 filed earlier. The arguments have been given in detail in the earlier submission which are summarized by way of synopsis.

Arguments :

29. The assessee had rightly offered the income as additional sale consideration of land at Khambhasala, which was supported by the evidence found in the course of survey, where the details of the land with name of the purchaser and seller was recorded (Page No 209 of the Paper Book) and the receipts of sale consideration of cash were recorded (Page No 213 of the Paper Book). The English translation of these papers are reproduced by the Learned CIT(Appeals) on page No 31 to 33 of the appellate order. On the basis of the seized material, it was proved that the assessee and his mother had received cash component on sale of the Khambhasala land. It is to be noted that the names of the purchasers mentioned in Annexure BI-1, Page 43 of the loose papers (See Page No 209 of the Paper Book), tallies with the sale deeds of Khambhasala land. The assessee also mentioned in the

statement recorded u/s. 133A and 131 that assessee had received cash consideration on sale of Khambhasala land in reply to Question No. 12(3) of statement recorded on 27.12.2014 and also in reply to the later part of Question No.3 recorded u/s. 131 on 02.02.2015, with reference to the survey conducted on 26.12.2014. In the return of income also, the assessee declared the income as "Income from Long Term Capital Gain" on sale of Khambhasala land and also claimed deduction u/s. 54F of the Act. The Assessing Officer treated the cash receipts as unexplained investment within the meaning of section 69 of the Act although, there were evidences that the assessee had earned actual income from sale of the land on the basis of loose papers which was not denied by the Assessing Officer. In support of the assessee's submission, the reliance is placed on the under mentioned decision of various courts.

- CIT vs. D.P. Sandhu Bros Chembur Pvt. Ltd. [193 CTR 578 (SC)]
- CIT vs. Shilpa Dyeing & printing Mills [219 Taxmann 279 (Guj. HC)]
- DCIT vs. Radhe Developers India Ltd. [329 ITR 0001 (Guj HC)]
- Ashwinbhai Babubhai Dudhat vs. The Interim Board for Settlement [164 taxmann.com 77]
- Shri Manish Madhav Malpani [ITA No 1090/PN/2013]

30. The Assessing Officer also rejected the claim of the assessee u/s. 54F of the Act on the ground that the assessee had carried out business activities in the impugned land. In this connection it is submitted that the assessee had never stated to have carried on business activities on sale of the land and the impugned land was agriculture land and the same was held as a Capital Investment since last more than three years and he had offered the gain earned from the said land as "Capital Gain". In the state of Gujarat, an agricultural land can be sold to an agriculturist only so, it cannot be said that the agricultural land is held as "Stock In Trade". No one can develop the agriculture land as housing or commercial project in Gujarat unless, it is converted into non-agricultural land. Further, the Assessing Officer himself has accepted the sale consideration mentioned in the sale deed as capital gain by giving the indexed cost of acquisition and computing the Capital Gain as Nil.

31. The assessee also relies on the findings of the Learned CIT(Appeals) given in Para 34 to 49 of the appellate order.

32. The written submission dated 03.07.2024, made by the Learned CIT (DR) were rebutted vide detailed arguments made in in Para Nos. 49 to 56 of the assessee's written submission dated 31.07.2024.

33. In view of the above submission, your Honours are requested to allow the appeal of the assessee and dismiss the appeal filed by the Revenue and oblige.

13. We find from a perusal of the assessment discussion that the Assessing Officer is more than fair in extracting all the said seized document(s) in support of the impugned addition(s). First such seized document is page-85 containing cheque entry of Rs.487.92 lakhs followed by alleged cash figure of Rs.295.05 lakhs. Learned CIT-DR could hardly dispute that apart from the foregoing figures, there is no clarification at all regarding the alleged investment or payment or receipt by the assessee; whatsoever; which could lead us to a conclusion that the corresponding cash amount had been rightly added in his hands. It is further noticed that although there is stated to be a cheque payment of Rs.487.92 lakhs; there is no endeavour undertaken by the learned departmental authorities to cross-verify the said cheque through the relevant books of account or bank statement(s) or from the investment(s) or from stock-in-trade of the immovable properties.

14. Faced with the situation, learned CIT-DR vehemently supports the CIT(A)'s above extracted lower appellate discussion that the assessee had got recorded his statement(s) before the departmental authorities thereby admitting additional income which stood retracted later on. We do not see any reason to

express our concurrence with the Revenue's instant technical arguments once it has come on record that none of the seized material extracted in the assessment order itself; fails to throw light on any alleged additional income component and therefore, all these documents have to be treated as "dumb" ones only. We further observe that once such seized material does not itself lead to any conclusion about the undisclosed income component, we are of the considered view that sec.292C drawing a presumption based thereupon itself fails and therefore, no addition based on the same is sustainable in law. We quote hon'ble jurisdictional high court's landmark decision in [2019] 108 taxmann.com 437 (Bom.) PCIT vs. Umesh Ishrani deciding the very issue in assessee's favour as follows :

"1. This Appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration;

"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition on account of cash payment for purchase of shops by holding that the seized papers

were not found from the premises of the assessee and hence presumption u/s. 132(4A), u/s. 292C of the IT Act, 1961 are not applicable, without appreciating that the seized papers were found during search in the premises of one of the partners Sri Laxmichand Rohira of the same firm for purchase of shops by the firm and in the said seized documents, amounts of cash paid by all the partners are noted and assessments made in the case of the said partner Shri Laxmichand Robira relating to his share of cash payment has become final, and therefore, that evidence is also relevant for assessment of other partners, including the assessee?"

2. The Respondent-Assessee is an individual. He was the partner of the firm. The Income Tax Department had carried out search and seizure operation during which certain loose papers were collected. On the basis of loose papers additions were made in the hands of the individual partners and on protective basis on the hand of the firm. While deleting such addition in case of the present assessee the Tribunal noted that the documents nowhere show that any payments were

made by same persons, no enquiry or verification was made with the seller of the shops or the developer. Tribunal therefore concluded that entries of the loose papers were not corroborated with any other evidence on record.

3. It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal noted that the loose papers entries were not clear and not corroborated by any independent evidence. No question of law therefore arises. Income Tax Appeal is dismissed."

15. This is indeed coupled with the fact that the CBDT's landmark circulars dated 10.03.2023 and 18-12-2014 have settled the issue that no such addition during a search or a survey; is to be made based on mere admissions and confessions wherein there is no supportive evidence(s) un-earthed by the departmental authorities. We conclude in these peculiar facts and circumstances that the impugned addition of Rs.9,55,65,676/- made by both the learned lower authorities on mere "dumb" documents and assessee's alleged admission(s), in absence of any substantiation at all; deserves to be deleted.

Ordered accordingly. His appeal ITA.No.1339/PUN./2023 is accepted.

16. Next comes the Revenue's cross-appeal ITA.No.1433/ PUN./2023 raising it's sole substantive ground that the Assessing Officer had rightly disallowed the assessee's sec.54F deduction claim of Rs.114421118/- representing on-money component; detected during survey. Suffice to say, the learned CIT(A)'s above extracted discussion from paragraphs-29 to 49 hereinabove has already placed reliance upon a catena of case law that such an on-money is indeed entitled for all the corresponding deduction claim(s); wherever applicable; under the provisions of the Act. Learned CIT-DR could also not dispute the clinching link between the assessee's on-money vis-à-vis the capital asset sold/transferred herein followed by his sec.54F deduction claim *qua* re-investment of the consequential capital gains in a residential house property, which already stands accepted *qua* the declared amount. We thus see no reason to disturb the learned CIT(A)'s findings accepting the assessee's impugned sec.54F deduction claim in question in light of various landmark judicial precedents herein (supra). Rejected accordingly.

17. This Revenue's appeal ITA.No.1433/PUN./2023 fails in very terms.

18. To sum-up, both these assessee's appeals ITA.Nos.1338 and 1339/PUN./2023 are allowed and Revenue's cross-appeals ITA.Nos.1432 and 1433/PUN./2023 stand dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 15.10.2024.

Sd/-	Sd/-
(RAMA KANTA PANDA)	(SATBEER SINGH GODARA)
VICE PRESIDENT	JUDICIAL MEMBER

Pune, Dated 15th October, 2024

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3 The Pr. CIT concerned.
4. DR, ITAT, "A" Bench, Pune.
5. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.