

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos. 1247 & 1358/Ahd/2019
Assessment Year. 2013-14**

Shri Vithalbhai Madhavlal Patel Plot No. 588, Sector No. 22, Gandhinagar-382022 Gujarat PAN: ACKPP7109B	Vs	The DCIT, Gandhinagar Circle, Gandhinagar
The DCIT, Gandhinagar Circle, Gandhinagar (Appellant)	Vs	Shri Vithalbhai Madhavlal Patel Plot No. 588, Sector No. 22, Gandhinagar-382022 Gujarat PAN: ACKPP7109B (Respondent)

**Assessee Represented: Shri Mehul K. Patel, Advocate
Revenue Represented: Shri Hrishikesh Hemant Patki, Sr. DR
& Shri Sudhendu Das, CIT-DR**

Date of hearing : 18-10-2024
Date of pronouncement : 23-10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These cross appeals are filed by the Assessee and the Revenue as against the appellate order dated 13.06.2019 passed by the Commissioner of Income Tax (Appeals), Gandhinagar arising

out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. The brief facts of the case is that the assessee is an individual deriving income from Consultation, Share of Profit form Partnership firm, Capital Gain and Interest Income. For the Asst. Year 2013-14, assessee filed its Return of Income on 28.09.2013 declaring total income of Rs.4,68,76,340/-. There was a survey action u/s. 133A of the Act was conducted at the business premises of the assessee and family members on 27.12.2010 at 1: 30 P.M. and concluded on the next date at 4:00 P.M. During the course of survey, statements were recorded disclosing income of Rs.25 crores by forcibly creating fabricated evidence in the form of a newly written diary. The above affidavit was retracted immediately by way of an affidavit. The assessee and his sons had to agree for so called unaccounted income disclosure under coercion and duress. The newly prepared diary (page 158 to 167 of PB), which was compelled to be written in hand writing of the Accountant Shri Shailendra Y. Doshi in early morning was done only to obtain support for the pre-determined amount of disclosure, and it contains only paper entries which is not true on facts and in law. In so called transactions, which had been forcefully written hurriedly through Accountant, by them contains so many grave mistakes and are also against the preponderance of probability. Some of the evidences will clearly indicate, so called cash transactions have been hurriedly written in the early morning and are far from truth. The Affidavit dated 10-04-2013 of the said Accountant Shri Shailesh Y. Doshi is also

produced before the lower Authorities but however the Ld AO made addition of Rs.19.4 crores since the entries are recorded in the diary seized from the premises of the assessee.

2.1. The A.O. has referred to the contents of the diary for the Investments made in various plots of land at village Harsol, Taluka-Talod and worked out the total of such entries of investments to Rs.9,47,78,991/-. He has also derived the support from the answer to Que. No.29 given by the appellant in the statement recorded during the course of survey proceedings. The assessee contended that the amount of Rs.5,30,78,991/- were credit entries and remaining amounts of Rs.4,17,00,000/- were debit entries which were on account of the amounts received from the partners of the firm and others but the A.O. did not accept this contention in absence of confirmations from the partners and other persons. After rejecting the detailed submissions made by the assessee vide letter dated 21.03.2016 which has also been reproduced on page 13 of the assessment order, but for the reasons that the assessee did not provide the confirmations from the partners and other persons who were claimed to have provided the money for purchase of various plots at village Harsol, the A.O. made addition of Rs.4,97,78,991/- being the total of debit entries made in the said diary and after allowing the deduction of Rs.4,50,00,000/- being the amount disclosed during the course of survey proceedings.

3. Aggrieved against the additions, assessee filed appeal before CIT[A], who deleted the addition by passing a detailed order observing as follows:

“ ... 5.5 From the above analysis of the documents placed in the paper book made available during the course of appellate proceedings, it is clear that the purchase and sale transactions made in respect of land at Vejalpur were amongst the associate companies viz. M/s AVS Developers Pvt. Ltd. and M/s AVS Infracon Pvt. Ltd. and the original land owner Shit Jugaji Babaji Thakor with whom the banakhat was made and subsequently, the land was sold to M/s AVS Infracon Pvt. Ltd. by him and the part amount of Rs.31,49,000/- was paid to confirming party i.e. M/s AVS Developers Pvt. Ltd. As the money transactions took place in the financial year 2008-09 relevant to A.Y.2009-10 and after execution of the sale deed on 10.11.2008, there could be no possibility of paying on money to the land owner by M/s AVS Infracon Pvt. Ltd., the ultimate purchaser of the land. Further, the diary (marked as Annexure A-1) Impounded by the Party No.2 led by the I.T.O., Ward-1, Gandhinagar appears to be newer than the diary (Marked as Annexure- A) impounded by the Party No.5 led by the TRO, Gandhinagar Range and the handwritings in the diary impounded by the ITO, Ward-1, Gandhinagar also appeared to be freshly written than the handwritings found in the diary Impounded by the TRO, Gandhinagar Range, Gandhinagar. The details of payments of Rs. 18,00,00,000/- (pages 165 to 167 of paper book) were shown as under:-

Date	Amount
18.09.2012	1,10,00,000/-
28.09.2012	1,20,00,000/-
10.10.2012	90,00,000/-
18.10.2012	1,50,00,000/-
26.10.2012	1,40,00,000/-
05.11.2012	1,10,00,000/-
11.11.2012	1,50,00,000/-
17.11.2012	95,00,000/-
26.11.2012	1,15,00,000/-
30.11.2012	1,65,00,000/-
03.12.2012	1,05,00,000/-
07.12.2012	1,15,00,000/-
10.12.2012	1,50,00,000/-
18.12.2012	1,85,00,000/-
Total	18,00,00,000/-

5.6 On page 1 of the diary, the Vejalpur land cost has been mentioned as under:-

Particulars	Amount	Remarks of the undersigned (the appellate authority)
Land cost	22,98,83,298/-	Did not find any source reference.
Advance (appears to be Banakhat amount)	31,00,000/-	Evidenced in the first banakhat made with Shri Jugaji Babaji Thakor
Stamp duty	22,22,500/-	Evidenced in the registered sale deed made on 19.11.2008.
Registration fees	4,53,750/-	-As above-
N.A. expenses	2,10,790/-	Did not find any source reference but appears to be acceptable as reference of collector's order dated 03.11.2008 is available.
Advocate fee for sale deed	64,250/-	Appears to be reasonable expenses
Total cost of land	23,50,34,588/-	

5.7. On page 2 of the diary, the expenses are mentioned as under:

Particulars	Amount	Remarks of the undersigned (the appellate authority)
Business development expenses	19,75,450/-	Amount of Rs.19,04,950/- has been found to be debited in the books of M/s AVS Infracon Pvt. Ltd.
Consulting charges to J.V. Buch & Co.	30,000/-	Amount of Rs.30,000/- has been found to be debited in the books of M/s. AVS Infracon Pvt. Ltd.
C.S. Uday Dave	7,500/-	
Bank charges	813/-	
Office expenses	1,144/-	Amount of Rs.1,144/- has been found to be debited in the books of M/s AVS Infracon Pvt. Ltd.
Fees to H. Desai & Co.	46,120/-	Amount of Rs.46,120/- has been found to be debited in the books of M/s AVS Developers Pvt. Ltd. (Audit Report-page 247 of paper book).
Opal Infotech	29,798/-	
Creative Cluster	1,450/-	

Soil testing expenses	25,0007-	Amount of Rs.25,000/- has been found to be debited in the books of M/s AVS Developers Pvt. Ltd.(Audit Report)
-----------------------	----------	---

5.8 Thus, in most of the cases, the source of information is the accounts of both these companies for the financial year ending on 31.03.2009. Further, on page 3 of the said diary, the total cost of Rs.23,93,46,503/- has been worked out as against the cost of land shown at page 1 of Rs.23,59,34,588/- by adding other expenses of Rs.34,11,915/- and the payment of Rs.4,53,45,600/- has been shown as made through cheques and thus, the balance amount to be paid in cash has been shown at Rs.19,40,00,903/-.

6.1 The analysis of these documents clearly reveals that the contents of the diary (impounded by Survey Team No.2) for payment of cash of Rs.19,40,00,000/- In respect of Vejalpur land which was included in the disclosure of Rs.25,00,00,000/- made by the appellant at the time of survey proceedings is nothing but an arranged one and there is some force in the averment of the appellant that the survey team dictated the narration of the entries which were made in a single handwriting by the accountant at one stretch. Further, no post-survey inquiry had been made by the A.O. so as to ascertain the sources of cash shown as to be paid (being liability which had also not been ascertained as to which company it belonged or related) as the land deal was made between two companies and Shri Jugaji Babaji Thakor. The company M/s AVS Infracon Pvt. Ltd. was incorporated only on 07.07.2008 and had purchased the said land from M/s AVS Developers Pvt. Ltd. as confirming party and Shri Jugaji Babaji Thakor, the original land owner.

6.2 The A.O. has attempted to link the land dispute with the cash transactions so recorded which have been categorically mentioned as "to be paid" and not "paid". Further, no corroborative evidences were brought on record by the A.O. by cross-examining the transactions of cash claimed to have been paid by the appellant when the names and addresses of all the three concerned parties were available.

6.3. It is highly improbable to believe that the cash payment was not paid before the sale deed which was executed in the year 2008 and paid after four years merely because there was a family dispute and the matter was decided in favour of Shri Jugaji Babaji Thakor. The copy of the order passed by the Pr. Senior Civil Judge on 19.11.2012 is available at pages 77 to 84 (application for seeking stay against the respondent and his agents etc. for transferring the rights in the final Plot No.29/3 of Survey No.809/2 falling in TPS 25 of Vejalpur Sim). The civil suit has been registered in the year 2009 on 11.11.2009 and much after the execution of the final sale deed. Thus, the allegation that on money of Rs.19,40,00,000/- was kept pending to be paid due to this dispute has no acceptable logic as applied by the A.O. without verifying the relevant documents.

6.4 Further, when the land was purchased by M/s AVS Infracon Pvt. Ltd. which had 11 directors including the appellant who was admitted as Director w.e.f. 01.08.2008 In the said company which purchased the land vide registered sale deed dated 10.11.2008 and in continuation of the banakhat made on 21.07.2008 (prior to joining by the appellant as Director) and without conducting proper Inquiry in the case of this company and another company viz. M/s AVS Developers Pvt. Ltd. in which the appellant was not at all a director which initially entered into the banakhat with Shri Jugaji Babaji Thakor, the original land owner.

6.5 While arriving at the above conclusion, I have derived the judicial support from the cases relied upon by the appellant and also the cases relied on by me which are as under:-

- 1) Paul Matthews 263 ITR 101 (Ker) - Relied on by the appellant
- 2) S. Kahder Khan 300 ITR 157 (Mds) - Relied on by the appellant
- 3) S. Khader Khan 352 ITR 480 (SC) - Relied on by the appellant
- 4) DCIT VS. Bansal Credits Ltd. decided by the Hon'ble ITAT, Delhi (2016) 74Taxmann.com 224 (Delhi ITAT)

6.6 Considering the above judicial pronouncements relied on by the undersigned on the core issue of validity of retraction of the admitted disclosure of Rs.25,00,00,000/- and making subsequent addition of Rs.19.40 crores, is decided in favour

of the appellant by holding that the retraction of the admitted disclosure was valid and, therefore, the subsequent addition of Rs.19.40 crores made by the A.O. is directed to be deleted. Thus, the ground no.1 is also allowed after taking into the account the above judicial pronouncements.

6.7 In view of all these facts coupled with the above-referred judicial pronouncements, the retraction from the original disclosure of Rs.25,00,00,000/- to the reduced disclosure of Rs.4,50,00,000/- which reflected in the return of income filed for A.Y.2013-14 is held to be valid. Accordingly ground no.1 of the appeal is allowed and the consequential addition of Rs.19,40,00,000/- made by the A.O. is accordingly deleted.

3.1. Against the addition of Rs.9,47,78,991/- being investments made in various plots of land at Village Harsol, Ld CIT[A] called for a remand report from the AO and confirmed the addition by observing as follows:

“... 7.3 I have considered the facts of the case, assessment order, submission made by the appellant, remand report and rejoinder filed by the appellant. Since this is an independent Issue not covered in the foregoing paragraphs wherein the issue of retraction of the admitted disclosure and subsequent deletion of the addition of Rs.19.40 crores as discussed. The relevant facts as noticed by the A.O. In the assessment order and the submissions made in relation to this addition are discussed as under. Since the addition of Rs.4,97,78,991/- has been made on the sole basis of impounded diary Impounded by the Survey Team No.5 during the course of survey proceedings u/s 133A of the Act on 27/28.12.2012, the same has been examined afresh and following observations are made in relation to the entries made in this diary:-

(A) Impounded Diary marked as annexure-A-1 (titled as Nilkanth Diary.) - Party No.5

(a) This diary was found in the business premises at Ground Floor, Shalin Complex, Sector No.11, Gandhinagar which was occupied by

the companies, firms and proprietary concerns of the appellant and his two sons and Shri Bipinbhai V. Patel has signed this diary after writing that this diary has been impounded by the authorized Officer (Shri V.G. Solanki, the then TRO, Gandhinagar Range, Gandhinagar) who was leading his survey team no.5 and deployed at the above-mentioned business premises.

b) Since it was stated by Shri Bipinbhai V. Patel that the contents of this diary could be explained by his father viz. the appellant, the questions were put to the appellant on the contents of this diary and through his statement recorded at the residential premises of the appellant at Plot No.588, Sector No.22, Gandhinagar on 27.12.2012 by the authorized officer (Shri Rajiv Divakar, the then I.T.O., Ward-1, Gandhinagar).

c) This diary contained the jottings exhibiting the details of payments made during the period 22.02.2012 to 13.12.2012 (As per pages 2 to 40) and the names of various persons have been mentioned with short details of purposes for which the amounts have been paid (though not in each and every case). The appellant has explained all the narrated entries in a separate statement recorded on 27.12.2012 which has also been dealt with separately.

d) Pages 41 to 69 of the said diary remained blank and no contents were found to be noted on these pages.

e) On pages 70 to 79, some jottings were found which reflected the payments to various persons. Page 80 contained the address of one Shri Dilip Narayandas Patel with date of birth and no financial transactions were recorded.

f) The names appeared in this diary for payments to the various persons on various dates are noted as under:-

- i) Shri Sanjaybhai B. Patel (claimed to be money giver)
- ii) Shri Ashishbhai B. Patel (claimed to be money giver)
- iii) Shri Hamidkhan Sarvarkhan
- iv) Kiritbhai Vakil
- v) Liyakhat Miya Mohammadmiya Parmar

- vi) Mustakmiya Sakumiya
- vii) Vipulbhal Savaliya(claimed to be money giver)
- viii) Abbasbhal
- ix) Mamu Miya Abid Miya
- x) Parmar Rajubibi Usmanmiya
- xi) Pathan Daulatkhan M.
- xii) Popatbhai Dhulabhai
- xiii) Parmar Samir Miya Usumanmiya
- xiv) Ishwarbhal
- xv) Rami Sureshbhai Vithaldas
- xvi) Hiteshbhal Kalathiya(claimed to be money giver)

g) On each and every page, the signature of Shri B. V. Patel has been taken on 28.12.2012.

h) All the odd number pages are kept blank and only even numbered pages exhibited the details.

... ..

7.4 During the course of appellate proceedings, the appellant has filed the copy of cash book prepared in respect of purchase of various plots at Harsol. This is a running cash book In respect of plots at Harsol and there is no reference of the plots belonging to the appellant or his partnership firms. Thus, it has to be concluded that all the transactions entered were personal transactions of the appellant and not carried out by the partnership firms in which the appellant is a partner. The appellant has also not furnished the copies of purchase deeds In respect of these plots of land and the treatment given to these plots, i.e. the trading assets or Investments in the said plots. The appellant has also not furnished the copies of accounts of these persons even during the course of appellate proceedings. The primary onus lies on the appellant to prove that the loan transactions, if any, were genuine and particularly, when the amounts had been received in cash from these persons. Even, if the loans are treated as genuine, the amounts of loans taken in cash have to be held as received by the appellant in violation of the section 269SS of the I.T. Act and in that situation also, the loan amounts would have to be considered as the amounts of the

penalties @ 100% of the loan amounts so received as per the provisions of section 271D of the Act. Thus, the A.O. has rightly observed that in absence of confirmations from Shri Ashishbhai B. Patel, Shri Sanjaybhal B. Patel, Shri Vithalbhal Sanvariya and Shri Hiteshbhal Kalathiya who claimed to have provided the cash of Rs.3,52,00,000/- during the period 01.04.2012 to 31.12.2012, the addition has to be made (as per the cash book made available in the paper book). Therefore, to meet the end of justice, the addition to be made on account of non-filing of confirmation from these partners could be Rs.3,52,00,000/- as against the addition of Rs.4,97,78,991/- being the difference of Rs.9,47,78,991 (being total fall entries in the impounded diary and the amount of Rs.4,50,00,000/- disclosed in the of income). However, the cash book reflected total payments of Rs.4,94,06,491/- return of income). However, the cash book reflected total payments of Rs.4,94,06,491/- leaving difference of Rs.3,72,501/- which might be attributable to totaling mistake or non-accounting of some amounts by the appellant in the cash book. The A.O. ought to have given the credit for opening cash balance of Rs.28,27,500/- which were the transactions of loans received from these persons in the earlier year and payments made out of such receipts of Rs.70,00,000/- leaving the opening balance at Rs.28,27,500/-, **Considering all these facts, the addition of Rs.3,52,00,000/- is confirmed on this account and the balance amount of Rs.1,45,78,991/- is directed to be deleted.** Thus, the ground no.2 of the appeal is partly allowed.

4. Aggrieved against the appellate order **Assessee is in appeal** before us raising the following Grounds of Appeal:

- (1) That on Commissioner grievously addition facts and of in Income law tax the learned (Appeals) has erred in partly confirming the of Rs.3,52,00,000/- (out of Rs.4,97,78,991/-) made on account of unexplained investment.
- (2) That on facts, in law, and on evidence on record, the entire addition ought to have been deleted, as prayed for.
- (3) The appellant craves leave to add, alter, amend any ground of appeal.

5. Aggrieved against the appellate order **Revenue is in appeal** before us raising the following Grounds of Appeal:

i) Whether, the Ld. Commissioner of Income-Tax(appeals) has erred in law and on facts in deleting the addition of Rs. 19,40,00,000/- on account of unaccounted investment evident from the entries found in the diary and impounded during survey proceedings and also disclosed by the assessee during the course of survey proceedings.

ii) Whether, the Ld. Commissioner of Income-Tax (appeals) has erred in law and on facts in restricting the amount of addition of Rs. 4,97,78,981/- made on account of unexplained investment to Rs. 3,52,00,000/- and granting the relief of Rs. 1,45,78,981/- to the assessee.

iii) On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.

iv) It is, therefore prayed that the order of the Ld. Commissioner of Income-tax (Appeals) may be set aside and that of the Assessing Officer be restored.

v) The appellant prays for leave, to amend or alter any ground or add a new ground which may be necessary.

6. Heard rival submissions at length and perused the materials available on record including the Paper Book filed by the assessee. Chronology of events in this case are

i. Registered Banakhat dated 06-06-2008 was entered between Shri Jugaji Thakore [original land owner] and M/s. AVS Developers P. Ltd. for Vejalpur land which are placed at page 102 of the PB. The Assessee herein has no connection with the said company.

ii. Banakhat dated 21-07-2008 entered between AVS Developers P Ltd and AVS Infracon P. Ltd which are placed at page 116 of the PB, wherein the Assessee is one of the Director of AVS Infracon P. Ltd.

iii. Registered Sale Deed dated 10-11-2008 entered between Shri Jugaji Thakore [original land owner] and AVS Infracon P. Ltd placed at page 127 of the Paper Book wherein AVS Developers P. Ltd. was a confirming Party to the said sale deed.

6.1. During the course of assessment proceeding the assessee gave complete details and replies which are placed in the paper-book at pages 56 to 62. In the freshly written diary, it was alleged that the assessee has made cash payment to Vejalpur land owner Shri Jugaji Thakore during the asst. year 2013-14 in respect of which final Sale Deed which was executed on 10-11-2008 which is relating to the Asst. Year 2009-10, whereby the AO made addition of Rs.19.80 crores. Normally in property transactions the Sale deed describes the details of property, how long the same had been owned by Vendor, is it by way of Sale or inheritance, mode of payments/consideration received, etc. It is a case on record the property relates to Vejalpur land was purchased by AVS Developers Pvt. Ltd. in July to Nov'2008 for the cost of Rs.421 lakhs and a registered Sale Deed executed on 10-11-2008 with original land owner shri Jugaji Thakor.

6.2. It is thereafter AVS Developers Pvt. Ltd. had transferred the said land to AVS Infra Pvt. Ltd. for a consideration of Rs 453.21 lacs as indicated in the above seized deed, the difference amount have been duly accounted for by the said company in A.Y. 2009-10.

Further the said purchase and sale are duly recorded in the Audited Accounts of the Company i.e. AVS Developers in A.Y. 2009-10 [which are placed at page 225 of PB]. Whereas the Ld AO without considering the above documents held that the land transaction completed on execution of registered sale deed in Nov, 2008 but the so called cash payments were made in Sept to Dec' 2012 to the Vendor Jugaji Thakor and others as per the newly written diary.

6.3. From the above set of the facts, it is ample clear that the newly prepared diary has no validity in law and it could not be considered for making any addition by the AO. The Ld CIT[A] had discussed the issue in detail which is reproduced in pages 4 to 8 of this order itself [hence the same is not repeated here]. Further the Ld CIT DR appearing for the Revenue could not contravert the findings arrived by the Ld CIT[A]. It is also to be taken on record, the Ld AO had issued a notice u/s.133(6) of the Act to AVS Infra Pvt. Ltd., which complied with on 05-02-2016, which are placed at page 63 & 64 of the PB which consist by total 5 annexures. Said reply also confirms all the above facts.

6.4. It is also evident from the Registered Sale Deed executed on 10-11-2008 for a total consideration of Rs.453.45 lacs which is substantially higher than the Stamp Authority Valuation; which was Rs.342.29 lacs at the relevant time. Thus the cost of land purchased is more than 32% higher than the Jantri value. Copy of Jantry Valuation as on 2008 is placed at page 101 of PB. Thus

there cannot be a presumption that cash payments in respect of this transaction other than the Sale Deed.

6.5. It is also to be taken on record the family members of the original land owner had filed a civil suit [which is placed @ page 65 of PB], against him shri Jagaji Thakor under the provisions of Indian Succession Act and other allied laws for claiming their right/joint share in the above land before the City Civil Court, Ahmedabad and the suit was decreed in favour of the original land owner Jugaji Thakor, (pages 77 to 84 of PB). It is thereafter further appeal filed by the family members before the Hon'ble High court of Gujarat and the same was also dismissed vide judgement dated 02-07-2013 and decided in favour of Jugaji Thakor holding that he was the only legal owner of the lands. Copy of High Court judgement is filed separately before us vide compilation dated 15-07-2024. This conclusively proves that the transaction of purchase of land was completed in Asst. Year 2009-10 when sale deed was executed on 10-11-2008, and there is no question of any cash payment being made after four years in the current asst. year 2013-14, thus the addition made by the Ld AO on this count is liable to be deleted.

6.6. The AO has described the basis for making the so called cash payments from September to December' 2012 is based on the Civil Suit Decree dated 19-11-2012 in respect of the family dispute of Jugaji Thakor's family. This finding arrived by the Ld AO is totally baseless and illogical, since the registered Sale Deed was executed as early as 10-11-2008 and the so called cash payments cannot be

made after passage of four years in respect of the concluded transaction. The assessee was not at all concerned with the internal family disputes of Shri Jujaji Thakor and it defies all logic, reasons and also human probability that the original owner who executed the registered Sale Deed will wait for cash payments till four years. Further now, the High Court order also held that the claim of the other family members of land ownership was without basis dismissed their claim.

6.7. In view of the above direct evidences and retraction affidavit on oath, it is clear that the Pocket diary Nilkanth A-1, was prepared hurriedly and under duress by the Survey Team, so the same can't be the ground for any addition and the said addition is rightly deleted by CIT(A). Thus the findings arrived by the Ld CIT [A] does not require any interference and the Grounds of appeal raised by the Revenue are devoid of merits and liable to be rejected.

7. In the result **the appeal filed by the Revenue in ITA No. 1358/Ahd/2019 is hereby dismissed.**

8. Now let us take Assessee appeal in **ITA No.1247/AHD/2019** wherein Ld AO made addition of Rs.4,97,78,991/- and CIT(A) confirmed addition of Rs.3,52,00,000/- and deleted addition of Rs. 1,45,78,991/-

8.1. During the course of survey, one diary from the assessee clerk impounded which inventorized as per Annex-A consists of pages 1 to 76 (which are placed at pages 168 to 207 of PB) pertains to investments at Harsol land. The investment in Harsol agricultural

lands/plot were made by five persons as indicated in said diary. All the entries in the said Diary are fully owned up by the assessee. It is seen from the said diary, which consists of both Debit (Receipts) and Credit (Payments) entries. The entries regarding receipt of amounts are clearly reflected in the said diary by writing "Rokada" or "JAMA" [which means cash amount is received] against the amount as placed in pages 173, 184, 185, 186, 187, 188 and 189 of the Paper Book,. From the amounts so received, the cash payments were also made. The above cash payments and cash receipts are reflected in the regular Cash Book, which is prepared from the entries in the said Diary, placed at pages 208 to 212 of the Paper Book.

8.2. Further all the above entries are fully owned up by the assessee and declared as unaccounted investments with a view to buy mental peace and to avoid protracted litigation. Thus entire unaccounted income of Rs.4.50 crores is disclosed by the assessee in the Return of Income and paid appropriate tax in the current year. However, the AO has calculated total investment at Rs.9.47 cores, which is total of amounts received and amounts paid, and after giving credit for the disclosure of Rs.4.50 cr has made an addition of Rs.4,97,78,991/- which is contrary to accounting principles as Income (Source) and Application (Investment) both cannot be taxed, as it would amount to double taxation. The higher figure of investment (source of fund or application of fund) could be taxed as per the provision of law.

8.3. Thus it is seen the assessee has agreed for entire unaccounted investments of Rs.4.50 crores to buy the peace and for avoiding litigations. However the Ld CIT(A) has confirmed Rs.3,52,00,000/- by holding that confirmations are not filed in respect of amounts received. In our considered view Ld CIT[A] failed to consider the Diary itself it is written that such amounts are received by writing "Jama" or "Rokada" [which means cash amount is received]. Thus the Diary is to be read as a whole and not by piecemeal to suit the need of the Revenue. Further when the assessee owned up the entire Diary and disclosure of Investment is made which is recorded in the said Diary, then the credit has to be given for the amounts received which are recorded in the same diary by giving Telescoping effect and to avoid taxing of Source and Investment both. Hence, **the addition of Rs.3,52,00,000/- confirmed by Ld CIT(A) is on erroneous premises and deserves to be deleted. Thus the Grounds raised by the assessee is hereby allowed.**

9. In the result the appeal filed by the Assessee in ITA No. 1247/Ahd/2019 is hereby allowed.

Order pronounced in the open court on 23-10-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 23/10/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue

3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद