



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

(Hybrids Hearing)

आयकरअपीलसं./ITA No.400/RJT/2023

Assessment Year: (2021-22)

Shree Ramji Hamir Virda, Gandhidham, Shree Rameshwar Logisics, 10-GF, Riddhi Siddhi Arcade, Plot No.3, Sector- 8, Gandhidham(Kutch)-370210	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACVPV3739N		

&

आयकरअपीलसं./ITA No.402/RJT/2023

Assessment Year: (2021-22)

M/s. Oswal Petrochem Plot No.312, Mithi Rohar Post Office, Mithi Rohar - 370240	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACHO0223F		

&

आयकरअपीलसं./ITA No.403/RJT/2023

Assessment Year: (2021-22)

M/s. Oswal Overseas, Gandhidham, D-94, Jawahar Chowk, Gandhidham - 370201	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAF09978R		



&
आयकरअपीलसं./ITA No.404/RJT/2023
Assessment Year: (2021-22)

M/s. OswalAgricomPvt. Ltd. Gandhidham, Plot No. 4 & 11, Sector-2, Kandla Special Economic Zone, Gandhidham - 370201	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACO7220M		

&
आयकरअपीलसं./ITA No.405/RJT/2023
Assessment Year: (2021-22)

M/s. Champalal Company, Gandhidham, BBZ-S-46, Jawahar Chowk, Gandhidham - 370201	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACFC1648Q		

&
आयकरअपीलसं./ITA No.406/RJT/2023
Assessment Year: (2021-22)

M/s. Mahavir Impex, Gandhidham D-93, Jawahar Chowk, Main Market, Gandhidham – 370201	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAKFM7847H		



&
आयकरअपीलसं./ITA No.407/RJT/2023
Assessment Year: (2021-22)

Shri NarendrakumarBhanwerlalNimbavat(HU F), Gandhidham Plot No. 273, Sector-5, Gandhidham -- 370201	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAFHN6432E		

&
आयकरअपीलसं./ITA No.408/RJT/2023
Assessment Year: (2021-22)

M/s. Priyanshi Corporation, Dist. Rajkot N.H.No.27, Tal. KotdaSangangani, Shapar(Veraval), Dist. Rajkot - 360330	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AALFP4895K		

&
आयकरअपीलसं./ITA No.414/RJT/2023
Assessment Year: (2021-22)

M/s. Rishabh Steel Supplier Plot No. 16, Nr. Hotchandani Hospital, Ward – 7/D, Gandhidham – 371201 Gujarat	Vs.	The DCIT, Central Circle-1, Rajkot, Aaykar Bhavan, Amruta Estate, 2 nd Floor, M.G.Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAKFR7890M		

Assessee by : Shri Mehul Ranpura, Ld. A.R.

Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)

Date of Hearing : 17/02/2025 & 26/02/2025

Date of Pronouncement : 30/05/2025



आदेश / ORDER

Per Bench:

Captioned nine appeals filed by the different assessees, all pertaining to assessment year (AY) 2021-22, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), which in turn arise out of separate assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961.

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.400/RJT/2023, for assessment Year 2021-22, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeal raised by the assessee, in a lead case in ITA No.400/RJT/2023, are follows.

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*
2. *The Ld. Commissioner of Income-tax (Appeals)-11 [hereinafter referred as to the "CIT(A)"] erred on facts as also in law in confirming addition Rs.1,11,000/- being alleged unrecorded rent and electricity charges of Rs.1,11,000/- as per material seized from the premise of Shri Vijay Nagda. The addition confirmed by CIT(A) is bad in law as also on facts and therefore the same may kindly be deleted.*
3. *The Id. CIT(A) erred on facts as also in law in partly confirming the addition made by assessing officer without allowing the assessee an opportunity of cross examination to third party.*
4. *Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*



4. Brief facts of the issue in dispute are stated as under. The assessee, is an individual before us and had filed its return of income for the year under consideration on 17.02.2022, declaring total income at Rs. 47,73,460/-. The assessee has earned income from the Salary and other income. A search & seizure operation was initiated and carried out on 10.11.2020. During the course of search, documents in the form of loose cash movement sheets have been seized from the premise of Shri Vijay Nagda, who is a cashier of the Neelkanth Group. On verification of such data, it is noticed that the assessee has made unaccounted transactions with Neelkanth Group. The assessing officer noticed that as per amended section 153C(1)(b) of the Act, where the Assessing Officer is satisfied that any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A, then the proceedings u/s 153C shall be initiated. In the present case, it can be said that the incriminating digital data/documents/books of accounts found and seized from the residential premise of Shri Vijay Nagda (covered u/s 153A of the IT Act) contained information pertaining/relating to assessee and the same is having bearing on determination of total income of the assessee. Therefore, the provisions of section 153C are clearly applicable in the case of assessee and provision of section 153C(1) is invoked for A.Y. 2015-16 to A.Y. 2020-21 and 143(3) for A.Y. 2021-22. During the course of assessment proceeding u/s 153A in the case of Vijay Nagda, satisfaction note of the assessee was recorded considering all the facts of the case. Again a satisfaction also recorded in accordance with the provision of the Income Tax Act 1961 and notice u/s 143(2) was issued to the assessee on 30/06/2022. Further notice u/s 142(1) along with questionnaire was issued to the assessee on various dated which is available on ITBA.



5. During the course of search, documents in the form of loose cash movement sheets have been seized from the premise of Shri Vijay Nagda, who is a cashier of the Neelkanth Group. The material seized from premise of Shri Vijay Nagda revealed hand written as well as computerized vouchers. It is understood from the data that these vouchers made by Shri Vijay Nagda forms the basis for recording of unaccounted transactions of the Neelkanth Group. The Statement recorded under oath u/s 132(4) of the Income Tax Act, 1961 of Shri Vijay Nagda wherein he reveals that the Neelkanth group has been regularly involved in unaccounted cash transactions. To be more specific, in response to question no. 33 to 62, he explained the contents of the loose papers which were seized and inventoried as Annexure A1 to A23 colour coding of the loose sheets adopted by the Neelkanth Group for recording the cash transactions has also been explained by Shri Vijay Nagda whereby pink vouchers contain record of cash receipts and white vouchers contain record cash payments for various kinds of transactions like bogus purchases, unaccounted cash loans, unaccounted payments, unaccounted receipts etc. The assessing officer noted that seized documents containing name of the assessee are speaking documents and the seized page nos. A4-45, A8-180 are the invoices raised by Shamji Kangad & Co. (entity owned by the member of Neelkanth Group) in the name of the assessee on various dates during the FY 2020-21 for rent of shop no. 1 inclusive of electricity charge at the rate of Rs. 10 per unit. It can be understood from both the invoices that monthly rent of Rs. 5,000/- plus electricity charge at the rate of Rs. 10 per unit is being paid by the assessee. The seized page nos. A4-46, A8-181 are the cash receipts entered by the Neelkanth Group entity in its unaccounted books against the name of the assessee on various dates during the FY 2020-21. The seized page nos. A4-46, A8-181 are the pink slips where cash receipts of Rs. 18,500/- being Rs. 10,000 rent for two months and Rs. 8500 electricity charge for two months is paid by the assessee to Shamji Kangad & Co. Further, the bottom part of the seized page nos. A4-46, A8-181 is also



signed by Shri Mihir Kangad who is an active member from the present generation of the Kangad Family popularly known as Neelkanth Group. There are signature of shamjibhaikangad, vijaynagda and the paying party i.e. the assessee are also present on the pink slips. Considering the two months payment of Rs 18,500 (10000 rent & 6500 electricity), it can be understood that annual payment of Rs 1,11,000/- should have been paid by the assessee. Thus, the assessing officer noticed that the overall reading of the seized document highlights that the assessee has incurred Rent and Electricity charges amounting to Rs. 1,11,000/- during the year. Accordingly, a show cause notice proposing of above addition was issued to the assessee.

6. In response to the show cause notice, the assessee vide his online submission furnished his reply/calcification, the extracts of the reply is reproduced as under

“...1 It is alleged that during the course of search action carried out at the various premises and business concerns of Neelkanth Group, certain loose papers pertaining to the assessee were found & seized from Shri Vijay Nagda, a cashier of Neelkanth Group. Photocopies of impugned seized documents are pasted in the notice and on that basis, it is alleged that the assessee has made following cash payment to one Shamji Kangad & Co.”

Month	Rent Payment	Electricity Charges	Total
August 2020	5000	5500	10,500
October 2020	5000	3000	8000
Total	10,000	8,500	18,500

On the basis of aforesaid alleged transactions for two months, total amount of alleged unaccounted cash payment for twelve months is extrapolated and estimated at Rs. 1,11,000/- and thereby, it is stated that overall reading of seized documents highlights that the assessee has incurred rent and electricity charges to Rs. 1,11,000/- during the year. In this regard, I am required to produce cash book highlighting the impugned cash payment made to Shamji Kangad & Co. of Neelkanth Group.

In connection with the above, at the outset, it is clarified that I have not made any such cash payment as alleged in the notice and that so-called documents seized from the possession of Shri Vijay Nagda / Neelkanth Group are not related to me. Therefore, it is requested not to take any adverse inference in my case on the basis of so-called loose papers seized from the premises of third party. Further, on verification of photocopies of impugned seized loose papers reproduced in the notice, it is seen that none of these documents are signed by me or any authorized signatory on behalf of me. Therefore, whatever documents stated to have been seized from the premises of Shri Vijay Nagda should be confined to him or his associated concerns and such documents cannot be made binding on me. Your good self may also appreciate that cash credit vouchers seized contains the signature of "Payer at the bottom right side, which is as under.



However, the above-stated signature is not mine or any of my family members/employees. My signature is verifiable from the audited financial statements submitted. Therefore, this fact proves that I have not made the cash payment reflected in the impugned cash credit /receipt voucher recovered from Shri Vijay Nagda.

2. Further, it is also understood that nowhere in the statements recorded from Shri Vijay Nagda or any other owner/partner/director of Neelkanth Group entities, it has been stated that I have made impugned cash payment. Therefore, allegation framed against me in absence of any adverse averments by the author of such seized document is totally unjustified. Even otherwise, it is a trite law that statement recorded from third parties cannot become ipso facto evidence in absence of any cogent corroborative evidences and unless opportunity of cross-examination of the witness is provided. Therefore, cognizance being taken on the alleged document seized from the premises of unrelated and third party i.e.. Shri Vijay Nagda in our case is totally unjustified and hence, it is requested not to take any adverse inference on this count.

It is also submitted that though the search action u/s. 132(4) of the Act in the case of Neelkanth Group was carried out on 10.11.2020, I have never been confronted about the alleged documents containing name resembling with my business name. Here, it also needs to clarify that name mentioned in all the seized documents is "Rameswer Logistic", whereas, actual name of my proprietary concerns is "Shree Rameshwar Logistics". Therefore, it is not a case where the name in the seized documents is also matches with the actual name of my concern. If proper inquiry/investigation would have done at relevant time, I would certainly clarify the facts that no such unaccounted transactions on account of Rent and Electricity have been carried out. Therefore, assessment proceeding initiated without making proper inquiry/investigation and without giving opportunity of cross-examination of the department's witness is completely unjustified and illegal.

Furthermore, it of rented property as per seized documents is Shop No. 1. However, it is a fact on record that my registered place of business is situated at Office No. 17, Plot No. 19, Ward-12A, Gandhidham. Therefore, I am not engaged in any business activities from the address/description mentioned in the seized documents, which also proves that I have not made any payment for rent/electricity charges

Kind attention is also invited to the provision of Section 132(4A) and Section 292C of the Act creates deeming fiction on the assessee subjected to search, wherein it may be presumed that any such document found during the search from the possession or control of person searched belongs to such person and contents of such documents are true. In the instant case, it is a fact on record that the loose papers found during the course of search in case of Neelkanth Group and their employee (cashier). Therefore, first presumption is to made that such data / documents and transactions therein, are belonging to them and not to us. Further, when I am already denying the happening of any alleged unaccounted or cash transaction on the basis of entries in seized documents, the department cannot take suo-moto action in my case without any corroborative evidence. It is a well settled law that presumptions regarding the correctness of paper, document, data or books of accounts cannot be raised against a third party in the absence of corroborative evidence. Reliance placed on following decisions:

- *Rama Traders vs. First ITO [1998] 25 ITD 599 (Pat.) (TM), wherein, it was held that no addition could be made, on the basis of presumption raised by section 132(4A), in the hands of the assessee where in the books of another firm, certain figures were found showing the purchase made by the assessee.*
- *Jai Kumar Jain vs. ACIT (2007) 11 SOT (Jaipur) (URO), wherein, it was held that –*

“Addition in the instant case was made on the basis of the papers found from 'A' (Third Party). In search these papers were not confronted to the assessee. From the assessment order it was not borne out whether 'A'(Third Party) had stated these papers as pertaining to the assessee. No presumption could be drawn against the assessee u/s 132(4A) in respect of paper not recovered from him. No addition can be made on the basis of documents found from third party in the



absence of corroborative evidence. Therefore, the Assessing Office as Asstt. Years: 2004-05, 2007-08, 2008-09 well as the commissioner of Income Tax (A) erred in making the addition on the basis of said papers in the hands of assessee. Hence, the entire addition made on the basis of papers found from 'A' (Third party) was to be deleted."

- *Prarthana Construction (P) Ltd. vs. DCIT (2001) 118 Taxman 112 (Ahd.) (Mag). wherein, it was held that -*

"loose papers and documents seized from premises of third parties and statement recorded at back of assessee without it being afforded opportunity to interrogate said documents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee."

3 Section 292C shows that a statutory presumption can be drawn where any documents is found in possession of a person in the course of a search or survey that it belongs to "such a person". In the present case, the search took place at the premises of Neelkanth Group and their employee. During this search, certain loose papers containing journal and cash receipt were alleged to have been found. No-other corroborative documents evidencing exchange of cash between me and Neelkanth Group evidencing exchange of cash has been found. Thus, it is clear that there is no document found in order to exercise the presumption u/s. 292C of the Act. Furthermore, it is well settled law that merely because of some entries or references or even name of the assessee found in any documents / data seized from the possession of third party, the same are not sufficient to prove that the assessee indulged in the transactions mentioned in such documents / data Reliance is placed on the following decisions:

- *Hon'ble Supreme Court in the case of CBI Vs. V.C. Shukla & Ors. (1998) 3 SCC 410*
- *Hon'ble Supreme Court in the case of Vinod Solanki Vs. Uol&Anr (SC-Civil Appeal No.7407 of 2008)*
- *Hon'ble High Court of Bombay in the case of Adl. CIT vs. Miss Lata Mangeshkar (1974) 97 ITR 696 (Bombay), wherein, it held that -*

"entries in the day-book or the ledger would be a corroborative piece of evidence and once the direct evidence of the person who was said to have made payments in 'black' to the assessee was disbelieved no value could be attached to entries in the ledger or to the entries in the day-book even if one had been produced.

Reliance is placed on the decision of Hon'ble Supreme Court of India in the Writ Petition filed by Common Cause (A Registered Society) against Union of India. [(2017) 245 Taxman 214 (SC)]. The fact of the case is that the raids were conducted by the CBI and Income-tax Department at various premises of Aditya Birla group and Sahara group. During the raid, it is alleged that several incriminating documents and soft copies / e-mails were recovered, wherein, reference of payment made to some important public figures / politicians were found. The authorized officers of such companies have denied to have made any payment to the mentioned politicians and such companies have filed their application before Hon'ble Income-tax Settlement Commission ("ITSC"). Hon'ble ITSC allowed the application of Sahara as full and true and also granted immunity from penalty and prosecution. It was the case of petitioner that the order passed by the ITSC cannot be said to be in accordance with law and is self-contradictory and has been passed in haste. The petitioner also requested the Hon'ble Supreme Court to direct investigation into the material collected in the raids of two business groups. After careful consideration of entire facts and arguments from the both the sides, Hon'ble Supreme Court had held as under.

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.



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. In case all these are not insisted, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily.

Having regards to the fact, it is submitted that there is no direct evidence related to alleged cash payment made by me to Neelkanth Group in any seized documents and hence, any action on the basis of such documents found from the domain of third party would be based on the assumption, surmises and conjectures, for which we rely on the following decisions:

- *Hon'ble Supreme Court of India in the case of UOI vs. Playworld Electronics Pvt. Ltd. & Ors. 1990 AIR 202, wherein, it is observed that "...Even a great deal of suspicion, not possible to hold otherwise without an evidence"*
- *Hon'ble Supreme Court of India in the case of Raj Kumar Singh vs. State of Rajasthan in the Criminal Appeal No. 931-932 of 2009 observed "Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved and will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions. The large distance between 'may be' true and 'must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be true and must be true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.*

5. Thus, again reiterate that assessee has not carried out stated cash transactions with Neelkanth Group. Hence, it is requested not to take any adverse inference on the basis of so-called seized documents. Without prejudice to the above, comments on the given extract of the seized documents are as under

Annexure A-8; Page 180 & 181

It is alleged that this paper contains invoice raised by Shamji Kangad & Co (Entity owned by the member of Neelkanth Group) in the name of assessee on various dates during the FY 2020-21 for the rent of Shop no. 1 inclusive of electricity charge at the rate of Rs. 10 per unit. It is also clarified that impugned working/noting may be made by Shri Vijay Nagda or any other / unrelated person, on which I have no control or domain. Therefore, purpose of keeping such working as well as purpose of narrating / highlighting certain figures / text is best known to them.

It is also requested to provide the statement or averment made by the author/creator of such document or owner/partner/director of related concern of Neelkanth Group that what is his saying about such paper or transaction. Therefore, in absence of any clarity from the searched person and the assessee's right to cross-examine such person, this is nothing but "dumb document". Your good self has alleged that seized document shows that assessee has incurred such Rent & Electricity Expense. However, nowhere from the seized paper, it is reflected that I have made such payment and hence, allegation framed is completely unjustified and arbitrary, which is strongly objected.

Therefore, allegation made is completely in surmises and conjectures, which is departure from the theory of real income propounded by various High Courts and Apex Court and hence, the same is strongly objected. It is also requested to provide the statement or averment made by the author /creator of such document or owner/partner/director of related concern of Neelkanth Group that what is his saying about such paper or transaction. Therefore, in absence of any clarity from the searched person and the assessee's



right to cross-examine such person, this is nothing but "dumb document. It may not be out of place to mention that a charge of tax can be levied based on document only when such document is a speaking one in itself or becomes a speaking one if read in conjunction to some other corroborative evidence found during survey. In the case under consideration, it is not at all speaking one and signed or authenticated by me or person authorised by me. I had also inquired about such document with the owner of Neelkanth Group and it is understood that they are also not aware about the hotchpotch entries in the seized documents and digital data and they have also denied to have carried out transactions appearing in such documents or data. It is also understood that unaccounted income in the hands of Neelkanth Group on the basis of such data has already been determined. Thus, once the department has already taken cognizance of the seized documents in the case of searched person by taxing the appropriate income, no further adverse inference can be drawn in the case of third party, the same will tantamount to double effect. Reliance placed on the decision of Hon'ble ITAT, Mumbai Bench in the case of DCIT vs. Shri HimmatlalGopal Patel Senghaniin ITA No. 688/Mum/2018 (CO No. 71/Mum/2019), wherein, Hon'ble Court had in its order dated 11.12.2020 observed as under.

6. From the aforesaid assessment order framed u/s. 143(3) of the Act for the A.Y.2015-16 on 30.12/2016 in the hands of the Runwal Developers Pvt. Ltd., we find in para 8.6 reproduced supra that the Assessing Officer of Runwal Developers Pvt Ltd., had given a categorical finding that Runwal Developers Pvt. Ltd., had indeed made unaccounted cash payments of Rs. 8.70 Crores to the assessee. Hence, the order of the Department itself explains the source of Rs.8.70 Crores for the assessee in respect of labour payments thereon by the assessee. Hence, there cannot be any addition that could be made in the hands of the assessee in the sum of Rs.8.70 Crores in the facts and circumstances of the instant case. We also find that both the assessee as well as Runwal Developers Pvt. Ltd., were assessed by the same Assessing Officer and by the same Circle namely DCIT, Central Circle 4(1), Mumbai, Accordingly, we have no hesitation in directing the id assessee.

It is also understood that none of the person from Neelkanth Group have stated that the transactions appearing in the seized documents are unaccounted transactions with the assessee and there was receipt of cash from the assessee The predominant judicial view is that no arbitrary addition to the income can be made by the Assessing Officer based on the dumb documents, loose papers containing scribbling, rough/vague notings in absence of any corroborative material, evidence on record and finding that such dumb documents had materialized into transactions giving rise to income of the assessee which had not been disclosed in regular books of account by the assessee. Hon'ble Supreme Court in the case of KP Varghese Vs. ITO, Emakulam, And Another [1981 (9) TMI-SC] held that "the fictional receipt cannot be deemed to be a receipt in the absence of any cogent material to support the factum of actual receipt." As held by various judicial authorities, that rigours of the rules of evidence contained in the Evidence Act are not strictly applicable to income-tax proceedings. However, the principles contained in the Evidence Act, incorporated from rules of natural justice forming part of the common law, would naturally be applicable to income-tax proceedings. It is amply clear that the loose papers and documents cannot possibly be construed as books of account regularly kept in the course of business. Such evidence would, therefore, be outside the purview of section 34 of the Evidence Act, 1872. Therefore, the revenue would not be justified in resting its case on the loose papers and documents found from a third party. Reliance is also placed on the following judicial pronouncements:

Hon'ble High Court of Allahabad in the case of Ajay Gupta v. CIT [2020] 114 taxmann.com 577 (Allahabad) wherein it has been held that.

"We have heard counsel for the parties and perused the material on record It is not in dispute that two loose papers were found during search from the premises of assessee, however, during block assessment proceedings, the assessee had denied the documents and statement was recorded by Deputy Director of Investigation, he had submitted that he had no concern with the said documents, so seized Further, the assessing officer while passing the assessment order had only on basis of the loose papers found during search made addition to the undisclosed income of assessee while the entries of said papers remained uncorroborated

This Court, in the case of CIT v. Shadiram Ganga Prasad, 2010 UPTC 840 has held that the loose parchas found during search at the most could lead to a presumption, but the department cannot draw inference unless the entries made in the documents, so found are corroborated by evidence.



12 As, Section 132(4A) of the Act provides that any books of account, documents, money, bullion, jewellery or other valuable articles or things found in possession or in control of any person in course of search may be presumed to be belonging to such person, and further, contents of such books of account and documents are true. But this presumption is not provided in absolute terms and the word used is "may" and not "shall", as such the revenue has to corroborate the entries made in the seized documents before presuming that transactions so entered were made by the assessee. Presumption so provided is not in absolute terms but is subject to corroborative evidence. In the present case, Tribunal only on basis of presumption under Section 132 (4A) of the Act, reversed the finding of CIT (A), without recording any finding as to how the loose sheets which were recovered during search, were linked with the assessee. In the absence of corroborative evidence, the Tribunal was not justified in reversing the finding by the CIT (Appeals).

In view of the above, we are of the considered view that order passed by Tribunal reversing the finding of CIT (A) in regard to deletion of addition made of Rs 5,58,870/- and restoring the order of A.O. on mere presumption is unsustainable. The order dated 12th March, 2010 is set aside to that extent. and the matter is remitted back to Tribunal to decide afresh, as far as addition of Rs. 5,58,870/- is concerned, within a period of three months from today"

7.Hon'ble ITAT Chandigarh Bench has in the case of *Cosmos Infra Engineering (India) Ltd. v. DCIT* [2017] 88 taxmann.com 761 (Chandigarh - Trib.) has held that;

We find force in the above contention raised by the learned authorised representative (hereinafter referred to as "AR") of the assessee. Further it can be noted that the learned Commissioner of Income-tax (Appeals) in paragraph 3.2 of the impugned order has made an observation that it was not on record that as to what was the version of M/s. Mahesh Mehta group about this entry recorded in the "bahi" found at his residence. Under such circumstances when even the third party from whose premises the alleged documents were found, has not confirmed that the said entry belong to the assessee, there was no question of any assumption or belief that the entry belonged to the assessee. Moreover, any entry found on loose papers in the premises of the third party without any corroborative evidence, cannot be made basis for addition in the case of the assessee. During the course of search at the premises of the assessee, no incriminating material relating to the above stated entry had been found. We, therefore, do not find any justification on the part of the lower authorities to make addition in the case of the assessee on the basis of an entry found in the "bahi" of third party from which neither it can be definitely said that the name written therein was that of the assessee nor any other evidence relating to the above transaction has been found. In view of this, the addition made by the lower authorities on this issue is not sustainable under the eyes of law and the same is accordingly ordered to be deleted.

Mahasay Ganesh Prasad Ray v. Narendra Nath Sen AIR 1953 SC 431, wherein, Hon'ble Supreme Court has observed that;

Loose papers seized could not be regarded as accounts within the meaning of section 90 of the Evidence Act. [Referred in *Addl. ITO v. T. Mudduveerappa Sons* [1993] 45 ITD 12 (Bang.)]

S.P. Gramophone Co. v. CIT [1986] 158 ITR 313 (SC), wherein, it was held that

An unsigned paper containing allocation of profits amongst the partners has no evidentiary value. (Referred in *T. Mudduveerappa Sons (supra)*)

ACIT v. Ravi Agricultural Industries [2009] 117 ITD 338 (Agra) (TM). The fact of this case is that in a survey u/s. 133A the revenue authorities found certain loose papers on which some numerical entries were recorded. The assessee explained that noting on the piece of paper has nothing to do with the unexplained



investment made by the assessee. The A.O. made addition to the assessee's income on the basis of loose papers without any other supportive evidence. The Commissioner (Appeals) deleted the addition. The Hon'ble Tribunal, both the Third Member agreeing with Judicial Member, held in para 11 as under.

"Now looking at the paper, it has some numerical figures but does not, in any way, show that it has some relationship with some business transactions of the assessee. The paper that was taken as a material for making the addition does not conclusively establish that it pertains to the business transaction of the firm. Now, the department is making the addition as a part of unexplained investment. What sort of investment the department has found is also not clear from the assessment order. The addition, in sum and substance, made by the department is clearly not supported by any material, which can point out to unexplained investment outside the books of the assessee...."

8. Similar, view was taken in ITO v. Smt. Pratibha Goyal [2011] 14 taxmann.com 50 (Jp.), wherein, reference was made of Mumbai Bench of the Tribunal in the case of Universal Impex v. ITO in ITA No 444/Mum/2007. In the said judgement, it was held that addition made on the basis of statement of one of the partners and entries recorded in the diary cannot be upheld solely on the strength of the statement without any supporting material. The onus was on the assessing officer to collect supporting material and since the assessing officer has not discharged his onus, therefore, the addition was deleted. We noted that CIT v. Maulikkumar K. Shah [2008] 307 ITR 137 (Guj.). In this case, Hon'ble jurisdictional High Court has upheld the decision of Commissioner of Income-tax (Appeals) and the Tribunal holding that no addition was justified on the basis of loose papers. In this case, notings in the seized diary found from the premises were the only material on the basis of which the A.O. had made the additions. The A.O. had not brought any corroborative material on record to prove that such sales were made and 'on-money' was received by the assessee outside the books of account. The A.O. had not examined any purchaser to whom the sales of shops were effected. Onus heavily lay on the revenue to prove with corroborative evidence that the entries in the seized diary actually represented the sales made by the assessee. Such onus had not been discharged by the revenue. Mere entries in the seized material were not sufficient to prove that the assessee had indulged in such a transaction.

Nagarjuna Construction Co. Ltd. v. Dy. CIT [2012] 23 taxmann.com 239 (Hyd.). wherein, it is held as under:

"The basis for addition Only notebook/loose slips These notebooks/loose slips are unsigned documents The Assessing Officer has not established nexus between the notebook loose slips with accrual actual/receipt of interest. The notebook/loose slips seized found during the course of search is a dumb document having no evidentiary value, no addition can be made in the absence of corroborative material. If there is circumstantial evidence in the form of promissory notes, loan agreement and bank entries, the addition is to be made on that basis to the extent of material available. The assessee is not expected to explain the loose papers found as there is no evidence other than notebook/loose slips regarding accrual of interest. It is held no addition can be made on the basis of dumb documents/notebook/loose slips in the absence of any other material to show that the assessee has carried on money lending business. Nothing on the notebook/diary/loose sheets are required to be supported/corroborated by other evidence and are also include the statement of a person who admittedly is a party to the noting and statement from all the persons whose names there on the notebook/loose slips and their statements to be recorded and then such statement undoubtedly should be confronted to the assessee and he has to be allowed to cross examine the parties. In the instant case, undoubtedly no statement from the parties whose names found in the notebook/loose slips has been brought to the notice and as such entire addition in the hands of the on the basis of uncorroborated writings in the loose papers found during the course of search is not possible."

Hon'ble High Court of Delhi in case of The CIT Delhi (Central) -II Vs D K. Gupta [2008 (9) Tmi 28 Delhi High Court] upheld the order of the tribunal wherein it was held that Ad-Hoc/ Dumb Documents without any corroborative evidence/finding that the alleged documents have materialized into transactions cannot be deemed to be the income of the assessee. The relevant part of the judgement is reproduced herein under



"The tribunal returned a finding of fact that there is no corroborative or direct evidence to presume that the notings/jottings had materialised into transactions giving rise to income not disclosed in the regular books of account."

Consequently, the tribunal upheld the findings of the Commissioner of Income-tax (Appeals) and agreed with the view taken by the latter that the assessee was liable to tax only on those receipts which had been proved to be income in the hands of the recipient. As a result thereof, the Tribunal found no reason to interfere with the findings recorded by the Commissioner of Income-tax (Appeals) on the ground that the same were based on valid and cogent materials placed on record and also produced before the Assessing Officer during the course of assessment proceedings. The Tribunal also noted that all the evidences, materials, explanations were furnished before the Assessing Officer and it is on the basis of such material that the Commissioner of Income-tax (Appeals) had arrived at the conclusion that no addition was warranted on the basis of the seized diaries.

. We have examined the impugned order in detail and have also heard the counsel for the parties and we find that the issues sought to be raised before us are purely issues of fact. The Tribunal, being the final fact-finding authority, has returned a certain set of facts. We find no perversity in such findings and, consequently, no question of law, what to speak of a substantial question of law, arises for our consideration. The appeal is dismissed.

- *Hon'ble Delhi ITAT in case of Ashwani Kumar Vs, ITO [1991 (8) TMI 142 - ITAT Delhi-D] held that in the case of dumb document, revenue should collect necessary evidence to prove that the figures represent incomes earned by the assessee.*

- *The Mumbai ITAT in case of S. P. Goyal Vs DCIT [2002 (4) TMI 952-ITAT Mumbai] held as under*

"loose papers cannot be termed as books of an assessee maintained for any previous year. Loose sheet of paper tom out of a diary could not be construed as books for the purpose of section 68. Addition could not be made simply on the basis of certain nothings on loose sheets of a diary without any corroborative evidence in the form of extra cash, jewellery or investment outside the books. The loose papers appear to be part of a 1992 diary. However, these loose papers consist of pages tom out from March, April, November and December. There is no closing balances or opening balances and there is no reconciliation of these entries. Therefore, it cannot be termed as books maintained by the assessee during the previous year... The loose paper in itself has got no intrinsic value. When it is a mere entry on a loose sheet of paper and if the assessee claims that it was only a planning, not supported by actual cash, then there has to be circumstantial evidences to support that this entry really represent cash of 60 lakhs. There is no such evidence found by the Revenue in the form of extra cash, jewellery or investment outside the books."

- *The Mumbai ITAT in Case Of D. A. Patel Vs DCIT [1999 (3) TMI 639-ITAT Mumbai] held that simply because a sheet of paper was found during the search at the premises of an assessee, he could not be saddled with a tax liability unless it could conceivably be related to the assessee in some reasonable manner*

- *The Mumbai ITAT in case of Amarjit Singh Bakshi (HUF) Vs ACIT [2003 (4) Tmi 243 - ITAT Delhi-C] Held That any Noting in the loose sheet is no evidence by itself. An entry in the books of account maintained in the regular course of business is relevant for purposes of considering the nature and impact of a transaction, but nothings on slips of paper or loose sheets of paper cannot fall in this category. Nothings on loose sheets of paper are required to be supported/corroborated by other evidence which may include the statement of a person, who admittedly is a party to the nothings. It was further observed in that case that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the IT Act, but the broad principles of law of evidence do apply to such proceedings*

- *The Hon'ble MP high Court in case of CIT V Cl. Khatri [2005(3)TMI 40] held that*



"On the basis of loose slip not bearing any date and also not stating as to which period they related, no estimate of household expenses could be made for a particular year. In the absence of any other evidence the estimate of household expenses in a particular year with reference to income of later year or future year was arbitrary and illogical. The Tribunal was held to be justified in deleting the additions

9. *The Calcutta Bench of ITAT in case of TS. Venkatesan Vs ACIT [1999 (7) TMI 100 ITAT Calcutta-A] held that in the absence of corroborative evidence, addition of undisclosed income could not be made simply on the basis of entries on loose papers recovered from the residence of a third party and certain general statements of said party.*

- *The Hon'ble Punjab and Haryana High Court in case of CIT, Jalandhar-I, Jalandhar Vs. M/S. Atam Valves (P) Ltd. [2009 (7) TMI 52-Punjab And Haryana High Court] dismissed the Revenue's Appeal and held that no substantial question of law arose out of the Order of the Tribunal. In this case, a survey was conducted u/s 133A and certain incriminating documents were found including a 'Slip Pad containing payment of wages to various persons. The slips were written by Manoj Jain, an employee of the assessee, who was confronted with the slips, apart from questioning of the Director. It was held by the Tribunal that even though explanation of the assessee that the loose papers did not relate to payment of wages during the year in question may not be accepted, in absence of any other material, the loose sheets by itself were not enough to make addition as per estimate of the A.O. It was observed by the Tribunal (as quoted):-*

"Now the question is regarding estimating the income on the basis of these loose slips. In our opinion, the Assessing Officer is not justified in estimating the sales on the basis of loose slips without substantiating that the assessee has actually made the sales to that extent of estimation made by the Assessing Officer and having no iota of evidence in the form of sale bills or bank account or movable and immovable property which represent earning of unaccounted income by the assessee. As such, the Id. CIT (A) to that extent is justified in holding that estimation of sales on the basis of loose slips represented payment of wages is not possible."

- *In case of Additional Income-Tax Officer Vs T. Mudduveerappa Sons. [1992 (12) TMI 62-ITAT Bangalore), the Bangalore Bench of ITAT held that in absence of any external evidence, addition cannot be resorted to only on the basis of loose papers. The department had not brought on record any evidence to prove conclusively that the seized documents contained details of secreted profits which were chargeable to tax. No doubt, the seized papers contained statement in figures of what appeared to be the financial results of certain unnamed transactions but there was nothing either in law or in logic to warrant the conclusion that the figures denoted secreted profits which were chargeable to tax. The details of distribution contained in the seized papers did not by themselves present a preponderance of probabilities so as to support department's case that what was distributed was taxable income.*

- *In ACIT Vs Arodilal Agrawal Karodilal Agarwal Vs ITO [1993 (12) TMI 105-ITAT Jabalpur) A Diary Seized during search contained certain jottings. The Tribunal held that the jottings in diary neither represented books of account nor any document and, therefore, presumption under section 132(4A) was not available and the addition made on the basis of the said jottings was deleted.*

- *In the Case Of MV Mathew Vs ITO [1993 (3) TMI 148ITAT Cochin] unaccounted sum found noted in a diary and the assessee claimed that the same represented deposits from certain parties. The parties denied having deposited the amount. The Assessing Officer treated the amount as advance made by the assessee and addition on that account was made. In the absence of clinching evidence to show that the impugned sum was advanced the amount was treated as deposited and the addition made was deleted.*

- *In ITO Vs W.D. Estate (P) Ltd [1992 (11) TMI 121ITAT Bombay-E], the Assessing Officer made addition on the basis of a file, a table diary belonging to a disgruntled employee found during search at his*



premises. This showed sales and sale amounts allegedly received as "on" money by the assessee. However, there was absolutely no evidence to show that the assessee in fact received "no" money payments. The assessee contended that such additions were based on hearsay evidence.

- *The Delhi ITAT In Case Of Shri Neeraj Goel Versus ACIT, CC-28, New Delhi [2018 (3) TMI 1406-ITAT Delhi] held that addition on account of alleged interest income is not sustainable in the eyes of law, because the document does not mention the name of the assessee, does not bear the signature of the assessee, not in the handwriting of the assessee, documents has imply jottings of certain figures and does not indicate whether it is an investment or deposit or loan, hence, the said seized document is dumb/bald and even otherwise, the same was never found either in the possession or control of the assessee. Therefore, on this basis, I delete the addition in dispute and accordingly reverse the orders of the authorities below.*

- *The Mumbai ITAT in Case of ITO, 5(2)(2), Mumbai Vs Kranti Impex Pvt. Ltd. And Vice-Versa (2018 (3) TMI 424 ITAT Mumbai) held that since the impugned seized papers are undated, have no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the assessing officer on grossly inadequate material or rather no material at all and as such, deserves to be deleted. Hence, we are of the view that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law.*

- *The Mumbai ITAT in case of The ACIT, Central Circle-21, Mumbai Vs M/s. Layer Exports Pvt. Ltd. [2016 (10) TMI 1024-ITAT Mumbai] held that additions are to be made on basis of tangible evidence and not solely on basis of estimations and extrapolation theory. Additions could not be sustained merely on the basis of rough noting made on a few loose sheets of papers unless the assessing officer brought on record some independent and corroborative materials to prove irrefutably that the notings revealed either unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. Additions could not be made simply on the basis of rough scribbles made by some unidentified person on a few loose sheets of paper. Since the seized papers were undated, had no acceptable narration and did not bear the signature of the assessee or any other party, they were in the nature of dumb documents having no evidentiary value and could not be taken as the sole basis for determination of undisclosed income of the assessee, thus, no addition can be made by assessing officer on grossly inadequate material or rather no material at all and as such deserved to be deleted.*

10. The Hon'ble in case of Principal Commissioner Of Income Tax, Central-2 Versus Umesh Ishrani [2019 (4) TMI 1947-Bombay High Court] held that since the tribunal concluded that entries reflected in loose papers were not corroborated with any other evidence on record, therefore the Tribunal was justified in deleting impugned additions made by revenue;

- *Assistant Commissioner Of Income-Tax Versus Dr. Kamla Prasad Singh (2010 (3) TMI 939-ITAT Patna]*



- *Pioneer Publicity Corpn. &Ors. Versus Deputy Commissioner Of Income-Tax (1999 (1) TMI 55-ITAT Delhi-C]*
- *Commissioner Of Income Tax Versus Girish Chaudhary [2007 (5) TMI 176-Delhi High Court]*
- *Assistant Commissioner Of Income-Tax. Versus Sri Radheshyam Poddar [1992 (2) TMI 131-ITAT Calcutta-B]*
- *SK Gupta. Versus Deputy Commissioner Of Income Tax [1998 (2) TMI 164ITAT Delhi-C]*
- *Satnam Singh Chhabra. Versus Deputy Commissioner Of Income Tax [2001 (12) TMI 211-ITAT Lucknow]*
- *Commissioner Of Income-Tax Versus Sm Aggarwal (2007 (3) TMI 226- Delhi High Court]*
- *Pankaj Dahyabhai Patel. Versus Assistant Commissioner Of Income Tax [1998 (8) TMI 105-ITAT Ahmedabad-AJ 1 Nk. Malhan. Versus Deputy Commissioner Of Income Tax [2004 (8) TMI 337 - ITAT Delhi-C]*
- *Principal Commissioner Of Income-Tax, Central-1, Kol. Versus Ajanta Footcare (India) (P) Ltd. [2017 (6) TMI 1327-Calcutta High Court]*
- *Deputy Commissioner Of Income-Tax, Central Circle 1, Hyderabad Versus C. Krishna Yadav [2011 (3) TMI 680-ITAT, Hyderabad]*
- *M/S Harish Textile Engrs. Ltd., Mumbai Versus Dy. Commissioner Of Income Tax. Special Range-19 [2015 (11) TMI 287 - Bombay High Court]*

11. Considering the above facts and judicial pronouncements, your good self is requested not to take any adverse inference on the basis of given set of documents seized from the premises of third party. Without prejudice to the above, it is also submitted that provisions enumerated in Explanation-2 of Section 148 of the Act requires to issue notice u/s. 148 of the Act where the assessing officer with prior approval of Pr. CIT or CIT satisfied that any documents seized u/s. 132 in the case of any other person pertains to the assessee.

12. Therefore, before taking cognizance on the documents seized from the possession of other person, it is obligatory to obtain approval of higher authority i.e., Pr. CIT or CIT and then, after obtaining such permission, notice u/s. 148 of the Act has to be issued subject to the provision of Section 148A of the Act. Therefore, addition proposed in the ongoing assessment proceeding u/s. 143(3) of the Act on the basis of documents seized from other persons is completely illegal. I have furnished the details as above and hope that same will satisfy your requirement However, kindly grant an opportunity of furnishing further details in case required before taking any adverse decision in the matter and oblige....”

7. However, the assessing officer rejected the contention of the assessee and observed that the assessee has simply denied to have made any unaccounted transactions with Neel-Kanth Group, however, the link between the seized data and assessee has already been established. Moreover, the assessee’s request for cross-examination cannot be entertained as the primary evidence on which the reliance is placed in the present case is the seized document which clearly



shows that unaccounted cash payment to Neelkanth Group and not the statement of Shri Vijay Nagda. The assessing officer held that the assessee has incurred Rent and Electricity charges amounting to Rs. 1,11,000/-, which is not recorded in his regular books of account, therefore the same was added to the total income of the assessee on account of unexplained expenditure u/s. 69C r.w.s. 115BBE of the Act.

8. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has confirmed the action of the assessing officer. The ld CIT(A) observed that during the course of search action, documents in the form of loose cash movement sheets had been seized from the premises of Shri Vijay Nagda, who was a cashier of the Neelkanth Group. On verification of such data, it was noticed that the assessee had made unaccounted transactions with Neelkant Group. The other party being Shri Vijay Nagda in his statement recorded during the course of search proceedings has admitted that the transaction recorded in the seized documents pertain to Neelkanth Group and were not recorded in the books of account and notings in such seized material pertains to assessee, hence there is live nexus between statement recorded in the case of third party and transactions entered by third party with assessee. The assessee has not produced any confirmation of Shri Vijay Nagda/other persons stating that notings in such seized material does not pertain to the assessee. The ld CIT(A) relied on decision of the Hon'ble Ahmedabad ITAT in the case of Pravinbhai Patel 45 taxmann.com 533. With regard to contention of the assessee that the assessing officer has not provided cross-examination, it is observed that entire addition has been made based upon investigation report/ search report in case of search carried out in the case of Shri Vijay Nagda of Neelkanth Group on 10/11/2020 from which it is revealed that said person along with his entire group are engaged in the unaccounted transactions. For this, ld.CIT(A) relied on decision of the Hon'ble Jurisdictional



High Court of Gujarat in the case of Amrapali Fincap Ltd. Vs. Income Tax Settlement Commission [2016] 73 taxmann.com 97 wherein it is held that *"Where Settlement Commission, denied assessee for cross-examination of different witnesses, whose statements were recorded behind its back, and relying upon statements of these witnesses to some extent rejected application for settlement, since Settlement Commission had also taken into consideration other facts available on record, there was no scope for interference."* Therefore, based on these facts and circumstances, the Id. CIT(A), confirmed the addition made by the assessing officer.

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

10. Learned Counsel for the assessee submitted that merely because some entries or reference related to its name are found in the documents seized from third party, it is not sufficient to prove that the assessee has indulged in the unaccounted transactions, for this, Id Counsel relied on various case laws, which we have gone through.

11. The learned Counsel submitted that in the assessment order, the assessing officer alleged that seized document contains details of transactions carried out by the assessee with Neelkanth Group, however, here, the assessing officer grossly failed in establishing live-link or nexus of the assessee with the impugned noting made by third party in the seized document recovered from his premises and hence, addition made deserves to be deleted.

12. The learned Counsel further submitted that opportunity of cross examination has not been provided to the assessee, in respect of statement of third party that is, Vijay Nagada and Neelkanth group. In this regard, learned Counsel explained that it is settled law that any additions made in absence of providing opportunity of cross examinations of persons, whose statement has been relied upon for



making the additions is in violation of natural justice, hence cannot be sustained. The Hon'ble Supreme Court of India, in the case of Krishnachand Chelaram Vs. CIT 125 ITR 713 (SC) and Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 281 CTR 0241 (SC) has held that additions without providing the opportunity of cross examination is in violation of natural justice.

13. On the other hand, Learned DR for the revenue, submitted that a search u/s. 132 of the Act was carried out at the premises of the companies and individuals of Neelkanth Group on 10.11.2020. The Search was also carried out at the residential premises of cashier of the Neelkanth Group namely Shri Vijay Nagda. Certain materials were found and seized from his residence, which were inventoried as Annexure A-1 to A-23. These annexures contained details of unaccounted transactions including unrecorded Rent & Electricity charges made by the assessee with the Neelkant Group. The Id DR stated that it is evident that the assessee has not recorded the expenses of Rs. 1,11,000/- incurred on Rent and Electricity charges in its books of accounts. Therefore, the action of the assessing officer in working out the rent and electricity expenses on the basis of materials found and seized from the search premises of Neelkanth Group is correct. Therefore, addition made by the assessing officer may be sustained.

14. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that in the assessee's case under consideration, the notice under section 143(2) of the Act, was issued on 30th June 2022. Further, after few months, the notice under section 142(1) of the Act, was issued to the assessee, calling details and documents, however, soon after that, the assessment order was framed by the assessing officer, on 23.12.2022, in a haste manner without conducting proper



enquiry of the evidences and written submission, filed by the assessee. In response to these notices, the assessee submitted its written submission, alongwith documents and evidences, these written submissions were reproduced by the assessing officer, on page number 7 to 26 of the assessment order. These written submissions filed by the assessee along with documentary evidences have not been examined by the assessing officer, and there is no finding on the evidences submitted by the assessee and no any third-party enquiry was made by the assessing officer based on the documents of the assessee. Therefore, the assessment was framed by the assessing officer in hurry, therefore violated the principles of natural justice. The plot of land is not in the name of the assessee, therefore, the electricity expenses, pertaining to said plot should not belong to the assessee, the assessing officer did not conduct necessary enquiry, whether the plot is in the name of the assessee or not, moreover the Id. CIT(A) also did not take into account these essential facts and evidences. The basic fact that when the plot of land is not in the name of the assessee, the assessing officer has not examined the ownership documents of the plot nor conducted any enquiry. Neither the assessing officer nor the Id. CIT(A) has conducted third-party enquiry by appointing the Inspector to ascertain whether the plot is in the name of the assessee or not.

15. The Learned Counsel submitted that in most of the cases, assessing officer made 20% addition of Sales, however, learned CIT(A) restricted the addition at the rate of 8%. Learned Council submitted that if the assessee, at all, is to be treated as an agent/ commission agent, then only 2% addition may be made in the hands of the assessee. This aspect whether assessee is an agent or not has not been adjudicated by the assessing officer or by Id CIT(A) based on the documents and evidences submitted by the assessee. We reproduce here as an example, the findings of the Id. CIT(A) in ITA No.402/Rjt/2023, in the case of M/s Oswal Petrochem, as follows:



“The appellant has further argued the estimation of 20% being on the higher side. This plea has force because, the AO himself has agreed in the assessment order that the book profit of the appellant in this trade of sale is around 6%. Further, the appellant has already offered profit on this inflated purchase and sales in the books. The inflated sales is Rs.11,53,21,648/- and the inflated purchase is Rs. 11,07,50,085/-which are duly recorded in the audited books. It is an undisputed fact that transactions recorded in the documents seized from Shri Vijay Nagda are related to unaccounted sales & purchase and therefore, the AO has correctly applied the profit rate relying on the well-accepted precedents. Here, the appellant's contention that rate of net profit as declared in the audited financial statements should be taxed is not acceptable in view of the fact that the profit in case of unaccounted sales is always higher than the accounted sales. This is so because fixed expenses are always borne and absorbed by the quantum of accounted sales. Therefore, I am of the view that the margin in the case of unaccounted sales remains high as compared to accounted sales and that commercial temptation prompts the assesses to indulge in unaccounted sales. Therefore, the contention of the appellant to estimate the profit on difference between unaccounted sales & purchase as per books of accounts is not acceptable. On the other hand, though the AO has been reasonable in his approach by estimating profit on the difference between unaccounted sales & purchase, I am of the view that the rate of profit at 20% estimated by AO is on a little higher side compared to the Gross Profit declared in the audited financial statement and profit in the line of the business of the appellant. Therefore, the AO is directed to take the unaccounted profit at the rate of 8% on the difference between unaccounted sales & purchase, which will meet the end of justice in place of 20%.In view of the above factual discussion and legal matrix of the case, the AO is directed to consider the confirmed addition of Rs.3,65,725/- out of the total addition of Rs.9,14,312/-. Remaining addition of Rs.5,48,587/- stands deleted. Thus, the ground of appeal no. 3 is partly allowed.”

16. At this juncture, learned Counsel for the assessee, submitted that if the assessee, is to be treated, as an agent/ commission agent, in that circumstances, only 2% addition should have been made by the Id. CIT(A). Therefore, we note that the documents pertaining to agent/ commission agent have not been verified properly by the lower authorities.

17. Therefore, we note that notice under Section 143(2) of the Act, was issued to the assessee on 30.06.2022 and after some period the notice 142(1) of the Act, was issued to the assessee calling various details and documents. Further, notices were issued under Section 142(1) of the Act, which is available on ITBA. In response to these notices the assessee submitted its reply at the fag end, which is reproduced by the Assessing Officer on Page nos. 7 to 26 of the assessment order. The assessee submitted its reply before the Assessing Officer, alongwith documentary evidences and assessee's reply is running into more than 20 pages, which is reproduced by the Assessing Officer in the



assessment order Page nos. 7 to 26, and alongwith this written submission, the assessee has submitted documentary evidences also which were never discussed by the Assessing Officer in the assessment order. The Ld. Counsel submitted that the plot of land was not in the name of the assessee, therefore, the electricity expenses, pertaining to said plot of land does not belong to the assessee, hence, these basic facts have not been examined by the Assessing Officer. During the assessment stage the Assessing Officer would have appointed inspector to ascertain this fact whether plot of land was in the name of the assessee or not, however, the Assessing Officer has failed to do so. Had the Assessing Officer examined these basic facts which were submitted by the assessee alongwith written submissions, then decision of the Assessing Officer would be in favour of assessee. We also find that during the assessment proceedings the Assessing Officer did not conduct third party inquiry to corroborate the evidences found in the search and seizure proceedings. We also note that opportunity of cross-examination was also not provided to the assessee during the assessment stage. We also find that the documents pertaining to agent/ commission agent have not been verified by the assessing officer, to ascertain the status of the assessee, whether he is commission agent or not. Therefore, we are of the view that these appeals of different assesseees should be remitted back to the file of the assessing officer for fresh adjudication.

18. In case of other assesseees', as we have noted above, that during the assessment proceedings Assessing Officer held that the assessee has inflated, the inflow and is offset by cash generated from grey market transaction and such profit is 20% of the differential amount. The Assessing Officer held that in order to make this payment in cash, the assessee should have resorted to out of book transactions and earned profits thereon, which is without any evidence, the assessing officer has presumed and on this aspect, the assessing officer has not given an opportunity to the assessee, to submit further submissions before



him, which is against the principle of natural justice. Although, the Assessing Officer estimated the profit @20% of the transactions. On appeal, by the assessee, the Ld. CIT(A) reduced the unaccounted profit @8%, on the amount of sales, without being ascertained, whether assessee is a commission agent, or not. We note that the Assessing Officer has not examined such alleged unaccounted sales with documentary evidences, and addition was made based on surmise and conjecture.

19. We have already noted that in case of all these assessees, during the assessment proceedings, the assessee submitted written submission alongwith documentary evidences which are reproduced by the Assessing Officer in the assessment order. We have examined the written submissions filed by these assessees, during the assessment proceedings, along with documentary evidences and found that the Assessing Officer has failed to examine the basic documents submitted by the assessee and the assessment order was framed in haste without conducting any third-party inquiry or inspection. In case of some assessees` the Ld. CIT(A) has confirmed the 100% addition made by the Assessing Officer. However, the fact remains that in case of all these assessees the assessment order was framed without considering the documentary evidences filed by the assessee alongwith it's written submission which is more than in 20 pages, which have neither been considered by the Assessing Officer nor by the Ld. CIT(A), and the documentary evidences submitted alongwith these written submissions have not been examined by the Assessing Officer by issuing notices to third parties, to ascertain the true nature of transactions and true nature of assessee. Therefore, we find that assessment order framed by the Assessing Officer is in violation of principle of natural justice.

20. It is now a well settled law that tax authorities entrusted with the power to make assessment of tax, discharge quasi- judicial functions and they are bound



to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by Apex Court in **Dhakeswari Cotton Mills Ltd. v, Commissioner of Income Tax, West Bengal (1955 SCR (1) 941)** that a taxing officer *"is not lettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law"*, but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence - of administrative law as principles of natural justice. **It is, however, necessary to remember that the rules of natural justice are not a constant- they are not absolute and rigid rules having universal application.** It was pointed out by Hon`ble Supreme Court in **Suresh Koshy George v. The University of Kerala &Ors.(1969 SCR (1) 317)** that *"the rules of natural justice are not embodied rules"* and in the same case the Hon`ble Supreme Court approved the following observations from the judgment of Tucker, L.J. in **Russel v. Duke of Norfolk and Ors. (1949) 1 All. England Reports 108)** *"There are in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."* One of the rules which constitutes a part of the principles of natural justice is the rule of *'audi alterempartera'* which requires that no man should be condemned unheard. Therefore, we are of the view that these all appeals should be remitted back to the file of the Assessing Officer to examine the primary documents of these different assesseees, alongwith written submission and adjudicate the issue in accordance with law. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and



remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits. For statistical purposes, the appeals of the different assessees are treated as allowed.

21. In the result, all these appeals filed by the different assessees, are allowed for statistical purposes.

Order pronounced in the open court on 30/05/2025.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER
Rajkot
दिनांक/ Date: 30/05/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

TRUE COPY

Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot