

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.124/RJT/2021

WITH

Cross Objection No.02/RJT/2022

निर्धारणवर्ष /Assessment Year: 2019-20

ACIT, Cent.Cir.2 Rajkot.	बनाम Vs.	M/s.Kishan Plus Minerals Jetpar Road, Nr. Pavadiyali Temple, Jasmatgadh Morbi. PAN : AAQFK4689P
(अपीलार्थी/Assessee)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, Ld. Counsel

राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld. CIT-DR

सुनवाई की तारीख/Date of Hearing : 29/01/2025 (originally heard  
refixed on 05.06.2025)

घोषणा की तारीख/Date of Pronouncement : 20/06/2025

**ORDER**

**PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the Revenue and Cross-objection filed by the assessee, pertaining to assessment year 2019-20, are directed against the common order, passed by the Learned Commissioner of Income Tax (Appeals), under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 22.07.2021, which in turn arises out of an assessment order passed by the Assessing Officer, u/s 143(3) of the Act, dated 26.03.2021.



2. The grounds of appeal raised by the Revenue are as under:

*“1.On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in considering the facts of the case and in ignoring that there was complete backup of soft data maintained record of unaccounted sales in accounting software "Profit NX" found during the course of Survey.*

*2.On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in ignoring the facts that during the course of survey, parallel books of accounts were found having a record of whole sales amount as per accounted data & amount as per parallel books of accounts, on which the assessing officer has relied upon.*

*3.On the facts and in the circumstances of the case and in law, learned Commissioner (Appeal) erred in deleting the addition of Rs.4,03,40,722/- out of total addition of Rs.4,10,91,050/- made by the assessing officer on account of unaccounted sales.*

*4.On the facts and in the circumstances of the case and in law, assessing officer has duly investigated and applied his mind on the report of the DDIT, Investigation wing and after satisfying himself has made the assessment on the basis of cogent material and relevant evidence on record.*

*5.On the facts and in the circumstances of the case and in law, learned Commissioner (Appeals) erred in ignoring the facts that the unaccounted sales has been duly confronted with the partner of firm and admitted that the same belongs to him.*

3. The grounds of appeal raised by the assessee in the CO No.02/RJT/2022 are as follows:

*“1.The grounds of appeal mentioned hereunder are without prejudice to one another.*

*2.The Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad [hereinafter referred to as the "CIT(A)"] erred on facts, as also in law in confirming addition of Rs.7,50,328/- out of total addition of Rs.4,10,91,050/- made on account of alleged unexplained cash credit. The addition retained is totally unjustified on facts as also in law and may kindly be deleted.”*

4. When the matter was called for hearing, the learned Counsel for the assessee at the outset submitted that the cross-objection filed by the assessee for the assessment year (A.Y.) 2019-20, is barred by limitation by 18 days. The learned Counsel adverted our attention and has explained



sufficient reasons for this delay stating that due to postal anomalies, the assessee received the signed copy of the appeal memo and grounds of appeal raised by the revenue, late and rather it is a mistake of the department in providing information to the assessee to the effect that they had preferred the appeal before the Tribunal against the impugned order of Ld. CIT(A). Therefore this minor delay may be condoned in the interest of justice. However, Ld. DR for the Revenue stated that assessee has failed to explain the sufficient cause, hence, delay should not be condoned. A perusal of the reasons explained by the learned Counsel for the assessee, gives us, an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Accordingly, the delay is condoned

6. Now first, we shall adjudicate, the Revenue's appeal in ITA No.124/RJT/2021. We advert to the relevant facts. The assessee has e-filed his return of Income, on 13.10.2018, declaring total income at Rs. 0/- The assessee has shown total business income of Rs. 10,04,597/- and also claimed the set-off of brought forward (b/f) unabsorbed depreciation, to the extent to the profit earned in current year. The assessee has earned income from manufacturing and trading of Body Clay, which is the basic raw-material for manufacturing of vitrified tiles. A search was conducted on the group cases of "Coral Group of Morbi" which was commenced on 03.01.2019 and was finally concluded on 02.03.2019 in all the group cases. Along with the search action, a survey u/s 133A of the Act, was also carried out on the business premises of the assessee Firm and certain incriminating documents were found and impounded. A backup of soft data which was maintained in the accounting software "profit-NX" has been taken in a separate Hard disk and office premises of Shri Bhagwanjibhai Amrutiya, who was partner in the assessee- firm till 31.03.2018,



was also covered u/s 133A of the Act and certain incriminating documents related to the assessee- firm were found and impounded. The Statement on oath was also recorded during the Survey proceedings and during investigation proceedings conducted, of Bhagwanji Bhai Amrutia. During the course of survey certain incriminating documents were found and impounded. Accordingly, case was selected for compulsory scrutiny and the notice u/s 143(2) of I.T Act, 1961 was issued and served on 26.09.2019 through ITBA. Notice u/s. 142(1) of the Act, was issued along with a questionnaire dated 06.02.2021 requesting to furnish the compliances in the matter as required. The assessee has complied to the notices/questioner issued by the assessing officer, from time to time, electronically.

7. During the course of survey proceedings u/s 133A of the Act, at office of Bhagwanjibhai P. Amrutiya alias Bhupat Amrutiya at Shop No- F-4, First Floor, Darshan Plaza, Near Vardhaman residency, Morbi, a loose paper file was impounded as annexure A-3. The contents of loose paper file page numbers from 112 to 116 (Annexure A-3) was confronted with the, Shri Bhupendrapatel, who was present at the time of survey proceedings. In his statement on oath, Sh. Patel has stated that detailed explanation of these pages would be given by Shri Bhagwanjibhai P. Amrutiya alias Bhupat Amrutiya only. Accordingly, again statement of Bhagwanjibhai P. Amrutiya alias Bhupat Amrutiya was recorded on dated 15/03/2019, under oath and was confronted with the contents of page numbers from 112 to 116 (Annexure A-3). In his statement, he has categorically stated that these pages are related to Kishan plus Mineral i.e. assessee- firm. Further, on perusal of these pages, it is noticed that these pages contain profit and loss account, Balance sheet, Sundry Creditors (Raw Material), Sunday creditors from 01/04/2018 to 30/06/2018. This data is related to Kishan plus Minerals, as stated by Shri Bhagwanjibhai Amrutiya, who was also one of the partner up to 31/03/2018. Profit and loss account and Balance sheet as



mentioned below for from 01/04/2018 to 30/06/2018 was extracted from backup of data in the accounting software “profit-NX” which were taken in separate hard disk during the course of Survey action at the factory premises of assessee, which was the data of regular books of accounts of the assessee -firm. The data in the above back up was the financial statement of this firm entered in the regular books of accounts. Further, the data of regular books of accounts has been compared with the entries of the loose papers impounded from the premises from office premises of Sh. Bhagwanji Bhai Amrutiya which was the parallel books of accounts of the assessee. On comparison of balance sheet with parallel books of accounts, as per loose papers impounded, it is seen that in data of regular books of accounts, assessee- firm is showing partners’ capital of Rs. 3,39,68,949/- whereas, in parallel books of accounts found and impounded as loose papers there are Partners capital accounts totalling to Rs. 7,50,60,000/-. The details are as under:



The details are as under-

Name Of The Partners Of Kishan Plus Minerals	As Per Accounted Data	As Per Parallel Books Accounts	Unaccounted amount, Of Which is not offered for tax.
AshokkumarMaganlalVarasada	3039161	5600000	2560839
BharatbhaiPranjivanbhaiKundariya	3533308	9780000	6246692
BhavnabenBrijeshbhaiSitapara	2032629	4075000	2042371
BrijeshbhaiGordhanbhaiAmrutiya	2817206	5600000	2782794
DipakJayantilalSurani	3032629	4075000	1042371
DurlabhjibhaiKanjibhaiAmrutiya	4826605	4900000	73395
KetanPopatlalSitapara	3032629	4075000	1042371
ParsotambhaiRavjibhaiBavarava	4937223	10960000	6022777
PrakashbhaiNaranbhaiBavarava	2254080	7575000	5320920
RajnikantPranjivanbhaiKundariya	2762223	11190000	8427777
ThakarsibhaiKanjibhaiAmrutiya	1701257	7230000	5528743
<b>Total</b>	<b>3,39,68,950</b>	<b>7,50,60,000</b>	<b>4,10,91,050</b>

8. During the course of assessment proceedings, assessee was specifically asked to furnish the detail explanation on this issue. It was also informed to the assessee that failure to comply with the notice the assessment will be completed on the basis of material available on record. In response to this, assessee has furnished the reply, before the assessing officer, which is reproduced by the assessing officer in the assessment order, page number 3 to 8. In its reply, the assessee submitted that documents found from the premises of the retired partner, is nowhere connected with the assessee -firm, and the existing partners are not responsible for the entries recorded in the documents found from the retired partner. Moreover, the impounded documents from the retired partner, were dump documents, which have no connection with the assessee. Moreover, the said retired partners should be treated, as a third- party and before making



addition on the basis of these documents found from the retired partner, the opportunity of cross examination should be provided to the assessee. The noting related to the assessee- firm were found during the course of survey conducted at the office premise of Shri Bhagwanjibhai Amrutiya. In this regard, it was submitted that Shri Bhagwanjibhai Amrutiya was not a partner of the assessee firm in the given period and as such, there is no legal sanctity of such loose papers found from the possession of third party. The assessee also stated that the provision of Section 132(4A) and Section 292C of the Act creates deeming fiction on the assessee subjected to search or survey, wherein it may be presumed that any such document found during the course of search / survey from the possession or control of person searched / surveyed belongs to such person and contents of such documents are true. However, in the case under consideration, it is an undisputed fact that the impugned loose papers were not found from the possession of assessee- firm or its partner(s), but the same were found from the possession of third party. Therefore, noting made in such loose papers do not present a preponderance of probabilities so as to support the allegation of unexplained credits and unaccounted sales. It was also submitted that simultaneous to the survey action carried out at the office premises of Bhagwanjibhai Amrutiya, survey was also carried out at the factory premises of the assessee -firm. However, surprisingly, the partners of the assessee -firm had not been confronted with the alleged loose papers impounded from the premises of Mr. Amrutiya. Even during the post survey, the assessee -firm or its partner have not been confronted with the impugned loose papers recovered from the possession of Mr. Amrutiya. This fact proves that even the Department at the time of survey or investigating officer in post-survey did not found the impounded papers as much relevant for the purpose of assessment proceeding of assessee- firm.



As regard the reliance placed on the statements recorded from Shri Bhupendra B. Patel and Shri Bhagwanjibhai Amrutiya, it was submitted that averments made by both these persons in relation to the impugned loose sheets are contradictory and behind the back. It is seen that Shri Bhupendra B. Patel in his statement recorded during the survey stated that the said papers are related to one Ashokbhai Jetpar, whereas, in the statement recorded from Shri Bhagwanjibhai Amrutiya he stated that the said papers are related with Kishan Plus Minerals. Therefore, there is no any consensus between the deponents with reference to the impounded documents and hence, cognizance taken by the Department in the case of assessee- firm is totally misplaced especially in the light of facts that such papers as well as statements of deponents have never been confronted to the assessee -firm.

9.However, the assessing officer rejected the contentions of the assessee and observed that assessee has failed to appreciate that Shri Bhagwanjibhai Amrutiya was also partner of the assessee firm till 31/03/2018 and was very much conversant with the business activity of the assessee- Firm. So simply saying that the statement given by third Person should not be relied upon for the assessee's business activities. Shri Bhagwanji Amrutiya is somehow very much related to assess's business. Therefore, statement given by Shri Bhagwanji was on oath who was ex-partner of the assessee- firm cannot be considered as a third party statement. Most importantly, all statements are voluntary, consistent, trustworthy satisfying the test of reliability, corroborating in nature to *modus-operandi* of the assessee, substantiating the circumstances and conduct of the assessee. These are well corroborated to one another and supported by material impounded. Further, credibility of oral evidences depends considerably on evaluation of the totality, not isolated scrutiny. It is not necessary that it should be perfect. The statement recorded during the course of search/Survey is a strong piece of evidence, the Courts have given great significance to the



statements recorded observing that the facts disclosed in the course of search/survey by way of statement has got evidentiary value. Therefore, the Assessing Officer concluded that assessee -firm has introduced the capital. It is worthwhile to mention here that at the time of Survey proceedings at the business premises of the assessee, physical stock of Rs. 46,63,155/- was found, and closing stock as per books was found of Rs. 95,56,580/-. Therefore, there was Shortage in the stock of finished goods of Rs. 48,93,425 ( Rs. 46,63,155- Rs. 95,56,580). Moreover, during the course of Survey Action at the office premises of Kishan Plus Minerals a loose paper file was found and seized as annexure A-1. On analysis of page no 50 and 51 of annexure A-1, it was noticed that Kishan Minerals have made cash sales of Rs. 5,74,976/- of raw material. This undoubtedly indicates that the shortage of stock, is from unaccounted sales of the assessee of Rs. 2,82,55,968/- which also was noticed in the entries found on loose paper which is assessee's parallel books of account. Therefore, the assessee has done the unaccounted sales and the profit earned from such unaccounted sale has been entered in the parallel books of account as Capital in the name of partners. Therefore, the amount credited against the capital in the parallel accounts is Unexplained Credit to the tune of Rs.4,10,91,050/-, therefore, the same was added to the total income of the assessee as per the provision of the section 68 of the Act.

10. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has partly allowed the appeal of the assessee. The Ld. CIT(A) noticed that the first finding of the assessing officer is that the statement given by Shri Bhagwanjibhai was on oath who was ex-partner of the assessee -firm cannot be considered as a Third-party statement. The Ld. CIT(A) stated that how much credibility can be attributed to the documents found from the possession of a person who was no more a partner of the



assessee- firm at the time of survey. Much more, what is the sanctity of the impugned documents, which contained data of a period post retirement of the partner, particularly when there is neither the name of the assessee- firm nor the same are signed or authenticated or admitted as correct by any of the partners of the assessee- firm. Further, not a single figure of the impugned loose papers matches with the actual state of affairs of the assessee -firm as on that date. If the document is authentic, at-least the bank OD and bank balance should have been matching. Here not a single figure is matching. The second finding of the assessing officer was that, all statements are voluntary, consistent, trustworthy satisfying the test of reliability; that credibility of oral evidence depends considerably on evaluation of the totality, not isolated scrutiny. Here, the Ld. CIT(A) observed that first statement recorded was of Bhupendra Balubhai Patel on 03.01.2019, who is nowhere connected with the assessee- firm. In the said statement he had stated that the paper pertained to one Ashok of Jetpar. Then the statement of Shri Bhagwanjibhai Amrutiya was recorded later on 15.03.2019, wherein he stated that the papers pertained to the assessee firm. Thereafter, during the post-search / survey proceeding, Shri Bhagwanjibhai Amrutiya in his duly sworn and notarized affidavit dated 16.05.2019 clarified that averments made in his statement recorded during the post-search investigation was in haste without verification and reconciliation of actual facts and in absence of having correct information on the documents / data seized. Copy of affidavit of Shri Bhagwanjibhai Amrutiya is forming part of the paper book submitted in the appellate proceedings. Thus, there are three different inconsistencies arising, which clearly proves that the theory of the assessing officer about consistency, reliability and credibility of oral evidence is farce. Therefore, the Ld. CIT(A), after relying on the judgements of the Hon'ble Supreme Court in case of Common Cause (A Registered Society) And Others Versus Union Of India And Others [2017(1)TMI 1164] popularly known Sahara



diaries and Aditya Birla diaries case, and following the judgment rendered in case of V.C. Shukla , deleted the addition.

11. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us, and assessee also filed cross objection before us.

12. Ld. DR for the Revenue, narrated the facts that there was an unaccounted income to the tune of Rs.4,10,91,050/- and that unaccounted income was derived by the assessee by way of unaccounted sales, unaccounted stock and unaccounted cash sales. The documents seized by the Department belonged to the assessee, therefore, Ld. DR took us through paper book filed by the assessee and reconciled the sundry creditors with the documents seized by the Department vis-à-vis audited books of the assessee. The Ld. DR also reconciled the sundry debtors in the seized documents and the figures mentioned in the audited Profit & Loss account. The Ld. CIT(A) has stated in his order that in the seized documents, bank balances and overdraft balances, do not tally with the assessee's audited books of accounts, however, not only the bank balances and overdraft balances, are getting tallied but other figures of debtors and sundry creditors also getting tallied with the seized materials vis-à-vis audited financial statements. Therefore, the seized material cannot be treated as a dump documents because entries mentioned in the seized papers relating to the debtors and creditors and unaccounted sales are getting tallied with the audited financial statements. Therefore, the seized documents cannot be brushed aside and the addition made by the assessing officer based on the seized documents should be sustained.

13. The Ld. Counsel for the assessee submitted that the existing partners are not responsible to the retired partner's documents which were found by the departments, as the search proceedings was conducted on the retired partners



and not on the assessee-firm, therefore, the existing partners do not accept these documents, found from the retired partner's premises. Therefore, these old and dump documents found with the old partners, who had retired, from the assessee firm, cannot be related to the assessee- firm in the subsequent years. The search was conducted on the ex-partner, who has retired from the firm, and then simultaneously, survey action was conducted on the assessee- firm. After the retirement, the retired partner does not have any connection with the existing assessee-firm. Moreover, up to 31.03.2019, the books of accounts were not audited i.e. Revenue department has impounded the material pertaining to period 01.04.2018 to 30.6.2018, and in this accounting period, that is, up to 31.03.2019, the books of accounts of the assessee-firm were not audited. Therefore, the impounded material is only rough noting and rough statements. The Ld. Counsel took us through paper book Page No.48 and stated that all the papers were belonging to Ashokbhai Jetpar and these documents did not belong to the assessee-firm. The Ld. counsel stated that ex-partner who retired from the firm should be treated as third-party and such statement should not be relied without being given an opportunity of cross-examination to the existing partners. The Ld. Counsel also stated that the statement of Shri Bhupendrabhai is not relevant for the assessee-firm and moreover opportunity of cross-examination was not given to the assessee. Therefore, Ld. Counsel contended that order passed by the Ld. CIT(A), after considering the above facts, is just and proper.

14. In respect of grounds raised by the assessee in cross-objection No.2, filed by the assessee, the Ld. Counsel for the assessee argued that Ld. CIT(A) has confirmed the additions to the tune of Rs.7,50,328/- out of total addition of Rs.4,10,91,050/-. To confirm the addition of Rs.7,50,328/-, the Ld. CIT(A) does not have any corroborative evidence except two statements, therefore, the estimated addition sustained by the Ld. CIT(A) should be deleted.



15. The Ld. DR for the Revenue, in rejoinder stated that there is a correlation between unaccounted cash book, unaccounted balance sheet with the accounted Balance Sheet in the credit side. In the credit side, the creditors are getting tallied with the audited Balance Sheet and debit side, the debtors are getting tallied. The Balance Sheet of the seized materials are getting tallied with the audited books of accounts. Therefore, these documents cannot be treated as dump documents, and therefore, instead of confirming the addition of Rs.7,50,328/-, entire addition made by the assessing officer to the tune of Rs.4,10,91,050/- should be confirmed in the hands of the assessee.

16. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. The assessee is a partnership firm, which came into existence on 02.05.2016. It is engaged in business of manufacturing and trading of ceramic body clay, which is used as raw material for manufacturing of tiles. The facts of the case is that, a survey action was carried out at the office premises of one Shri Bhagwanji Amrutiya on 03.01.2019. Simultaneously a survey action was also carried out at the premises of the assessee on same date viz., on 03.01.2019. It is gathered from the assessment order that, Shri Bhagwanji Amrutiya was ex-partner of the assessee firm. He retired on 31.03.2018. During the course of search at the premises of Shri Bhagwanji Amrutiya, certain loose papers were found and impounded (Page No. 112 to 116 of AnnexureA-3). Vide para 6 of the assessment order, the assessing officer had described the contents of the said loose papers viz., it is noticed that these pages contain profit and loss account, Balance Sheet, Sundry creditors (raw material), Sundry creditors from



01.04.2018 to 30.06.2018. This data is related to Kisan Plus Minerals, as stated by Shri Bhagwanjibhai Amrutiya, who was also one of the partner up to 31.03.2018. It is seen from the impounded papers that, there is no heading or any name of the assessee appearing on these impounded papers. The Investigation wing, in post survey verification, had inquired about these papers with Shri Bhagwanjibhai Amrutiya. He, in his statement recorded on 15.03.2019 stated that it relates to the assessee- firm. On this premise, the assessing officer proceeded to treat the same as pertaining to the assessee, while finalizing the assessment order of the assessee. The concurrent survey was also carried out at the premises of the assessee- firm, but the papers found and impounded during survey at the premises of Shri Bhagwanji Amrutiya, was never confronted to any of the partners of the assessee- firm. The existence of such impounded material was brought to the knowledge of the assessee and its partners, by the assessing officer vide notice u/s 142(1) dated 18.02.2021 and it was only then, such papers were provided to the assessee, and it was show caused as to why the difference between the figures mentioned in the impounded materials and those recorded in the actual books, should not be treated as unaccounted in the hands of the assessee. The assessee challenged the show cause notice, which was declined by the assessing officer and he made addition of difference of Rs. 4,10,91,050/-.

17. The Ld. CIT(A) observed that immediately post survey, the statement of one Shri Bhupendra Balubhai Patel was recorded on 03.01.2019, who was present at the time of survey at the office premises of Bhagwanji Amrutiya, wherein he stated that the impounded impugned papers belonged to one Ashokbhai of Jetpar. Interestingly, on the impounded note itself it is written Ashok Jetpar. Thereafter, a statement of Shri Bhagwanji Amrutiya was recorded on 15.03.2019, in post search/survey inquiry. In the said statement, Shri



Bhagwanji Amrutiya stated that the impugned papers pertained to the assessee. Thus, there are two inconsistencies arising here, that the finding of the assessing officer is contained in para 9 of the assessment order. The gist of the finding of the assessing officer is that, the statement given by Shri Bhagwanjibhai was on oath who was ex-partner of the assessee- firm cannot be considered as a Third-party statement; all statements are voluntary, consistent, trustworthy satisfying the test of reliability; that, credibility of oral evidence depends considerably on evaluation of the totality, not isolated scrutiny. It is not necessary that it should be perfect; that the statement recorded during the course of search/Survey is a strong piece of evidence; that Courts have given great significance to the statements recorded observing that the facts disclosed in the course of search / survey by way of statement has got evidentiary value; that no opportunity to cross examination is given to Shri Bhagwajibhai Amrutiya, as he was one of the partners of the assessee- firm till March-2018 and as such he cannot be considered as a third party; that there is other finding of unaccounted sale, shortage in stock of finished goods, and evidence of sale made in cash and all such things are corroboratory evidence which establishes that assessee has earned unaccounted profit from such activities and reinvested the same in the firm in the form of unaccounted credit in the name of partners. The Ld. CIT(A) noticed that the first finding of the assessing officer is that, the statement given by Shri Bhagwanjibhai was on oath who was ex-partner of the assessee- firm cannot be considered as a third-party statement. However, Ld. CIT(A) stated that how much credibility can be attributed to the documents found from the possession of a person who was no more a partner of the assessee -firm at the time of survey. Much more, what is the sanctity of the impugned documents, which contained data of a period post- retirement of the partner, particularly when there is neither the name of the assessee- firm nor the same are signed or authenticated or admitted as correct by any of the partners of the assessee- firm.



Further, not a single figure of the impugned loose papers matches with the actual state of affairs of the assessee- firm as on that date. If the document is authentic, at-least the bank OD and bank balance should have been matching. Here not a single figure is matching.

18. The Ld. CIT(A) further noticed that second finding of the assessing officer is that, all statements are voluntary, consistent, trustworthy satisfying the test of reliability; that, credibility of oral evidence depends considerably on evaluation of the totality, not isolated scrutiny. Here it needs to be seen that, the first statement recorded was of Bhupendra Balubhai Patel on 03.01.2019, who is nowhere connected with the assessee. In the said statement he had stated that the paper pertained to one Ashok of Jetpar. Then the statement of Shri Bhagwanjibhai Amrutiya was recorded later on 15.03.2019, wherein he stated that the papers pertained to the assessee. Thereafter, during the post-search / survey proceeding, Shri Bhagwanjibhai Amrutiya in his duly sworn and notarized affidavit dated 16.05.2019, clarified that averments made in his statement recorded during the post-search investigation was in haste without verification and reconciliation of actual facts and in absence of having correct information on the documents / data seized. Copy of affidavit of Shri Bhagwanjibhai Amrutiya is forming part of the paper book submitted in the appellate proceedings. Thus, there are three different inconsistencies arising, which clearly proves that the theory of the assessing officer about consistency, reliability and credibility of oral evidence is farce. The Hon'ble Supreme Court in case of Common Cause (A Registered Society) And Others Versus Union Of India And Others [2017(1)TMI 1164] popularly known Sahara diaries and Aditya Birla diaries case, following the judgment rendered in case of V.C. Shukla (supra), laid down the following principles:



*(i) Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;*

*(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;*

*(iii) The meaning of account book would be spiral note book / pad but not loose sheets;*

*(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;*

*(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;*

*(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.*

19. The assessing officer also stated that Courts have given great significance to the statements recorded observing that the facts disclosed in the course of search / survey by way of statement has got evidentiary value. However, we find that decisions referred by the assessing officer are applicable to a confession made by the party concerned and subsequently retracted. Here neither the assessee represented by the partners nor any employee of the assessee -firm had made any confession. There is only one confession that goes adverse to the assessee in remotest sense, and that is the statement of Shri Bhagwanjibhai Amrutiya, who is in possession of impugned documents of the assessee for the subsequent periods in which he was not even the partner. In other words for the period to which the impounded papers pertained Shri Bhagwanjibhai Amrutiya did not have any relationship with the assessee. When a person ceases to be the partner



of an organization, then the sanctity of the documents pertaining to post retirement period is beyond to his capacity as partner, casts serious doubt about the sanctity and intention of such documents. Nonetheless, the decisions relied upon by the assessing officer affects to a confession made by the direct party concerned and not by a third party. Hence, this theory also fails to justify the finding of the assessing officer. The assessing officer was of the view that, no opportunity to cross examination is given to Shri Bhagwanjibhai Amrutiya, as he was the partner of the assessee- firm till March-2018 and as such he cannot be considered as a third- party. However, in this regard the Ld. CIT(A) noted that assessee- firm came to know about the impugned data after two years of survey / impounding, when the above stated notice is received in assessment proceedings. In the assessment order the assessing officer refers to the impugned documents as parallel books of account, whereas, prima facie reading of the impugned pages reveal that it is only a statement. There is nothing corroborative on record which proves that the same represents the unaccounted transactions of the assessee. If it is indeed parallel books, then why the same was not found during the entire survey operation carried at the business premises of the assessee? Further, in the statement, Shri Bhagwanjibhai Amrutiya, had never stated that the transactions are unaccounted, nor did he state as to who prepared it, why it was prepared and the purpose for which it was prepared and kept in his custody. The Investigation Wing ought to have dig deep into the nature of the impugned documents to corroborate it with the statement of Shri Bhagwanjibhai Amrutiya. The person from whom it was found was neither an employee nor accountant. Rather he was ex-partner. One does not know the circumstances under which the possessor of the document exited the organization. One does not know whether he exited or was expelled. Under the circumstances, the cross examination is imminent. Thus, there is clearly avoidable friction and violation of principles of natural justice, as laid



down by the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. Commissioner of Central Excise 281 CTR 241 (SC) and Hon'ble Apex Court In the case of Kishanchand Chellaram vs. CIT (1980) 125 ITR 713. The Hon'ble Supreme Court in the case of Sahara India vs. CIT (2008) 14 SCC 151, had held that "The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. The aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. Further, the Hon'ble Supreme Court in Kalra Glue Factory v. Sales Tax Tribunal [1987] 167 ITR 498 set- aside the order of the Tribunal as well as order in revision of High Court on the ground that "...the statements of a partner of another firm upon which the Sales Tax Tribunal relied, had not been tested by cross examinations." Besides, the Hon'ble Supreme Court in the case of CIT vs. Sunita Dhadha in Diary No. 9432 / 2018 dismissing the SLP filed by revenue against the order of Hon'ble High Court of Rajasthan and confirming the order passed by Hon'ble ITAT, Jaipur Bench 'A' (2012) 148 TTJ 719, had held that, in case the assessing officer wants to make reliance for making addition on the basis of the documents found during the course of search at 3rd party then presumption u/s 292C will not be available against the assessee. Such presumption, even in the case of the assessee in whose case the document has been found during the course search, is rebuttable. The jurisdictional Hon'ble High Court of Gujarat in the case of Laxmanbhai S. Patel vs. CIT (2010) 327 ITR 290 (Gujarat), had held that:

*"It is true that while deciding the reference under section 256(1), the Court is mainly concerned with the decisions on questions of law. If the question posed before the Court is purely a question of fact, the Court should not entertain the reference. However, if some basic principles of law or statutory or constitutional provisions are violated by the authorities, the Court would not shut its eyes and take the view that the authorities below have appreciated the facts and evidence on record and arrived at a finding which is based on*



*facts and no question of law arises from the orders passed by the authorities below. The instant case was one of such cases where apparently there was a violation of principles of natural justice, as the statement of one of the important witnesses, namely, 'R', on which heavy reliance was placed by the Assessing Officer while making an addition on account of unexplained cash credit under section 68, was neither referred to in the assessment order nor a copy thereof was given to the assessee, nor the assessee was given an opportunity of cross-examining the said 'R'. The authorities below could not be absolved of the obligation by merely stating that it was not necessary to give such a copy to the assessee nor was it necessary to give an opportunity of cross-examining the said 'R', as the facts stated by him were admitted by the assessee. The whole issue of the addition in question was required to be viewed in that context. [Para 21]"*

20. Finally, the Ld. CIT(A) concluded that merely on the basis of alleged statement recorded from Shri Bhagwanjibhai Amrutiya, and failure to allow cross examination sought by the assessee, is a gross violation of principles of natural justice and hence, the action of the assessing officer is not justified and therefore the entire addition was deleted by Ld. CIT(A) except to Rs. 7,50,328/- . We do not find any infirmity in the above conclusion reached by the Ld. CIT(A). In the wake of above delineation, we see no error in the conclusion drawn by the CIT(A) in this regard. The CIT(A) in our view, has rightly deleted the addition. We thus decline to interfere with the conclusion so drawn by the CIT(A) whose order is under challenge by the revenue. Therefore, appeal filed by the revenue is dismissed.

21. In the result, appeal filed by the Revenue (In ITA No.124/RJT/2021), is dismissed.

22. Coming to the cross objection filed by the assessee, in CO. No.02/RJT/2022, we find that there were sources of the stock, as on the date of survey at the premises of assessee, unreconciled at Rs.7,50,328/- more so the practice of unaccounted sales is also suggesting the fact that during the course of survey, as per the impounded documents the cash receipts was Rs.5,74,976/- was noticed. Therefore, the suppressed sales to the extent of Rs.7,50,328/- not



recorded in the books of accounts has to be brought to be taxed and therefore the addition to this extent of Rs.7,50,328/- was confirmed by Ld. CIT(A). Based on the above factual position, we dismiss the cross objection of the assessee.

23. In the result, cross objection filed by the assessee (in Co.No.2/RJT/22), is dismissed.

24. In the combined result, the appeal of the Revenue is dismissed and cross-objection filed by the assessee is also dismissed.

Order is pronounced in the open court on 20/06/2025

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

राजकोट /Rajkot (True Copy)

दिनांक/ Date: 20/06/2025

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot