

**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**

**आ.(खो और ज).सं./IT(SS)A Nos.11 to 20/RJT/2022**

**निर्धारण वर्ष /Assessment Years:2011-12 to 2020-21**

Shri Shamjibhai Sadhabhai Kangad BBZ-S-60, Zanda Chowk, Gandhidham-370 201	बनाम/ vs.	Deputy Commissioner of Income Tax, Central Circle-1, “Amruta Estate”, 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:ADEPK 3471 E		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

**आ.(खो और ज).सं./IT(SS)A Nos.21 to 23/RJT/2022**

**निर्धारण वर्ष /Assessment Years:2014-15, 2016-17 &2017-18**

Deputy Commissioner of Income Tax, Central Circle-1, “Amruta Estate”, 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360001	बनाम/ vs.	Shri Shamjibhai Sadhabhai Kangad BBZ-S-60, Zanda Chowk, Gandhidham-370 201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:AABCA 8202 E		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

**आ.(खो और ज).सं./IT(SS)A Nos.15/RJT/2023**

**निर्धारण वर्ष /Assessment Year:2019-20**

Deputy Commissioner of Income Tax, Central Circle-1, “Amruta Estate”, 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360001	बनाम/ vs.	Shri Hetab Shamjibhai Kangad BBZ-South-60, Zanda Chowk, Gandhidham-370 201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:AQTPK 7484 M		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)



**आयकर अपील सं./ITA No. 320/RJT/2022**

**निर्धारण वर्ष /Assessment Year:2021-22**

Shri Shamjibhai Sadhabhai Kangad BBZ-S-60, Zanda Chowk, Gandhidham-370 201	बनाम/ Vs.	Deputy Commissioner of Income Tax, Central Circle-1, “Amruta Estate”, 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:ADEPK 3471 E		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos. 321/RJT/2022**

**निर्धारण वर्ष /Assessment Year:2021-22**

Deputy Commissioner of Income Tax, Central Circle-1, “Amruta Estate”, 2 <sup>nd</sup> Floor, M.G. Road, Rajkot-360001	बनाम/ Vs.	Shri Shamjibhai Sadhabhai Kangad BBZ-S-60, Zanda Chowk, Gandhidham-370 201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:AABCA 8202 E		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by. : Shri Mehul Ranpura, Id.AR  
राजस्व की ओर से/Revenue by : Shri Praveen Verma, CIT-DR &  
Shri Abhimanyu Singh Yadav, Sr-DR  
सुनवाई की तारीख/Date of Hearing : 25/06/2025  
घोषणा की तारीख/Date of Pronouncement : 31/07/2025

**आदेश/Order**

**PER BENCH:**

This is bunch of sixteen appeals, consisting eleven appeals filed by the assessee in (IT(SS)A Nos.11-20/RJT/2022, for Assessment Years (AYs) 2011-12 to 2020-21, and in ITA No.320/RJT/2022, and five appeals filed by the Revenue in IT(SS)A Nos. 21 to 23/RJT/2022 for assessment years (AYs) 2014-15, 2016-17 and 2017-18; and in ITA No. 321/RJT/2022 for A.Y.2021-22, which



relate to Shri Shamjibhai Sadhabhai Kangad, and Revenue`s appeal in IT(SS)A No. 15/RJT/2023 for A.Y. 2019-20, relates to Shri Hetab Shamjibhai Kangad. All these appeals pertain to separate assessment years, (assessment year-wise), and all these appeals are directed against the separate orders passed by the Learned Commissioner of Income-Tax (Appeals)-11, Ahmedabad (for short ‘Ld. CIT(A)’), which in turn arise, out of separate assessment orders passed by the Assessing Officer under section 153A/143(3) of the Income Tax Act, 1961 (in short ‘the Act’).

2. Since, the issues involved in all these appeals (Assessee and Revenue), 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 facts narrated in IT(SS)A No. 21/Rjt/2022, for assessment Year 2014-15, have been taken into consideration for deciding the above appeals *en masse*.

3. At the outset, learned Counsel for the assessee, informs the Bench that assessee does not wish to press appeal for assessment year (AY) 2011-12, in IT(SS)A No.11 therefore, we dismiss the appeal filed by the assessee, for assessment year 2011-12, as withdrawn.

4. Out of total 16 appeals, an appeal in IT(SS)A No.11 for assessment year 2011-12, has not been pressed by the assessee, hence, for remaining 15, appeals, of Assessee and Revenue, the concise and summarised grounds are as follows: These 15 appeals filed by the Assessee and Revenue for different Assessment Years, contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue as well as by the Assessee. Most of the grounds raised by the Revenue as well as Assessee, are



either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee, as follows:

**(A). Additional grounds of appeal of assessee, on Technical issue, raised by the assessee, before the Tribunal.**

(1). The assessee has raised additional grounds of appeal in three assessment years (AYs) 2012-13, 2013-14 and 2014-15, which reads as follows:

*“On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting assessee’s plea that notice u/s 153A of the Act could not be issued under fourth proviso of said section in absence of any "asset" representing the alleged undisclosed income.”*

(2) The assessee has also raised additional grounds of appeal in two assessment years (AYs) 2013-14, and 2014-15, which reads as follows:

*"On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting ground of appeal related to issuance of notice u/s 153A of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] during the pendency of earlier assessment proceeding, initiated u/s 147 of the Act. Therefore, two parallel proceeding initiated by the assessing officer was procedurally invalid and illegal which vitiates the entire assessment."*

**(B). Grounds of appeals, raised by Assessee and Revenue.**

*Ground No.1 - The Learned Commissioner of Income-tax (Appeals)-11, [CIT(A)], erred on facts as also in law in rejecting assessee's plea that no addition could have been made in the order passed u/s 153A of the Act, in absence of there being incriminating material found from the assessee. The order passed making addition without there being any incriminating materials may kindly be deleted.*

*Ground No.2 - The learned CIT(A) erred on facts as also in law in not appreciating the fact that the seized data/documents were found from the premises of third party, therefore addition on the basis of the said document cannot be made in the hands of the assessee u/s 153A of the Act. The assessing officer may kindly be directed to delete the addition on this ground.*

( This ground covers, IT(SS) No.15/RJT/2022 for A.Y. 2015-16, IT(SS) No.16/RJT/2022 for A.Y. 2016-17, IT(SS) No.17/RJT/2022 for A.Y. 2017-18, IT(SS) No.18/RJT/2022 for A.Y. 2018-19, IT(SS) No.19/RJT/2022 for A.Y.



2019-20, IT(SS) No.20/RJT/2022 for A.Y. 2020-21, and ITA No. 320/RJT/2022 for A.Y. 2021-22.)

*Ground No.3 - The Id. CIT(A) erred on facts as also in law in confirming the addition made of Rs.3,20,19,238/- by estimating profit at the arbitrary rate of 20% on the alleged unaccounted receipt of Rs.16,00,96,192/-on the basis of dumb data/documents stated to have been recovered from the premises of third party. The addition retained is totally unjustified and uncalled for and the same may kindly be deleted”.*

(This ground covers, IT(SS) No.15/RJT/2022 for A.Y. 2015-16, IT(SS) No.16/RJT/2022 for A.Y. 2016-17, IT(SS) No.17/RJT/2022 for A.Y. 2017-18, IT(SS) No.18/RJT/2022 for A.Y. 2018-19, IT(SS) No.19/RJT/2022 for A.Y. 2019-20, IT(SS) No.20/RJT/2022 for A.Y. 2020-21, and ITA No. 320/RJT/2022 for A.Y. 2021-22.)

*Ground No.4 -Assessee’s appeal - The Id. CIT(A) erred on facts as also in law in not deleting on merit addition made of Rs. 3,40,40,206/-, as alleged unexplained money u/s. 69A of the Act on the alleged ground of unaccounted cash generated by the assessee. The addition retained is totally unjustified and uncalled for and may kindly be directed to delete the addition made.*

**Ground No. 4- Revenue's cross grounds on the same issue in appeal:**

*(a)On the facts and in the circumstances and in law, the Id. CIT(A), failed to appreciate the facts on the case and wrongly allowed unexplained money to be set off from current year profit.*

*(b)On the facts and in the circumstances and in law, the Id.CIT(A), fails to appreciate the facts of the case, that the credit of debit balances of loan accounts was not allowable considering that no details whatsoever with respect to the balances have been provided by the assessee during the assessment proceedings.*

*(c) On the facts and in the circumstances and in law, the Id. CIT(A) has erred in granting relief of Rs. 3,40,40,206/- stating that the debit balances of the loan proceeds should have been allowed to set off against the addition made for the credit balances of loan proceeds for all the year involved, and for remaining balances also the source to the extent of amount of corresponding unaccounted business receipts for the respective years has been treated as explained and the balance amounts, if any, only shall be allowed to be treated as unexplained income u/s.69A of the Act.*

(The above ground covers, in assessee’s appeal in ITA No. 320/RJT/2022 for A.Y. 2021-22.)

(The above ground covers, in ITA No.321/RJT/2022 for A.Y. 2021-22)



*Ground No.5. In Revenue`s appeal in IT(SS) No.15/RJT/2023 for A.Y. 2019-20,(with reference to Shri Hetab Shamjibhai Kangad) reads as follows:*

*“On the facts and on the circumstances of the case and in law, learned Commissioner(Appeals) has erred in holding that the investment of Rs.1,24,90,000/- has already concluded in the case of Shri Shamjibhai S. kangad, father of the assessee, without appreciating the fact that the addition in the case of father was made out of seized data for the period from 01.04.2010 to 31.03.2017, but the addition in the case of the assessee, was made for assessment year 2019–20, relevant for financial year 2018-19.*

(This issue covers ground Nos.1 to 4 in IT(SS) No.15/RJT/2023 for A.Y. 2019-20)

*Ground No.6- In Revenue`s appeals:*

*(a) On facts and on the circumstances of the case and in law, the learned Commissioner (Appeals) erred in ignoring that there were parallel books of accounts maintained by the assessee in tally software, which was found and impounded during the course of search, on which the assessing officer has relied upon.*

*(b) Ld. CIT(A), failed to apriicate the facts of the case and in law, that one of the key person of the group concerns Shri Mihir Kangad in his statement recorded u/s.132(4) and has agreed unaccounted transaction have become happened and admitted that the transactions in the tally files, though complex but made on the instructions of members of Neelkanth group and correlation between the transaction recorded in tally file with independently verifiable third-party evidences proves that the entries recorded in the evidences seized are, true, correct and independently verifiable.*

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

(The above grounds of appeals cover, in Revenue`s appeal in IT(ss) A No. 21/RJT/2022 for AY 2014-15, IT(ss) No. 22/RJT/2022 for AY 2016-17, IT(ss) No. 23/RJT/2022 for AY 2017-18 and ITA No. 321/RJT/2022 for AY 2021-22)

5. Now, we shall adjudicate above, concise and summarised grounds of appeals, one by one, as follows.

6. First, we shall adjudicate, additional grounds raised by the assessee on technical issue, which are reproduced below for ready reference:



**(A). Additional grounds of appeal of assessee, on Technical issue, raised by the assessee, before the Tribunal.**

(1). The assessee has raised additional grounds of appeal in three assessment years (AYs) 2012-13, 2013-14 and 2014-15, which reads as follows:

*“On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting assessee’s plea that notice u/s 153A of the Act could not be issued under fourth proviso of said section in absence of any "asset" representing the alleged undisclosed income.”*

(2) The assessee has also raised additional grounds of appeal in two assessment years (AYs) 2013-14, and 2014-15, which reads as follows:

*"On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting ground of appeal related to issuance of notice u/s 153A of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] during the pendency of earlier assessment proceeding, initiated u/s 147 of the Act. Therefore, two parallel proceeding initiated by the assessing officer was procedurally invalid and illegal which vitiates the entire assessment."*

7. Learned Counsel for the assessee, submitted that above legal grounds on technical issue, have been raised by the assessee, before the Tribunal. These above legal grounds were also raised before the learned CIT (A), by the assessee. The Id. Counsel stated that the facts, relating to above two additional grounds, are in the assessment order, and since these are purely legal issues and facts pertaining to these legal issues are already on record, therefore, in the interest of justice, these legal grounds may be admitted by the Tribunal for adjudication.

8. On the other hand, learned CIT-DR for the Revenue, opposed the prayer of the assessee to admit these legal grounds and stated that since the assessee has not raised these legal grounds before the authorities below, therefore, at this stage, these legal grounds should not be admitted.

9. We have heard both the parties on this preliminary issue. We note that assessee had raised these legal grounds, before the learned CIT(A), therefore, we do not agree



with the learned DR for the Revenue, to the effect that assessee did not raise these legal grounds before the lower authorities. These legal grounds were raised by the assessee, during the appellate proceedings, before the learned CIT(A), however, the assessee forgot to take these grounds in appeal-memo, along with Form No. 36. The Learned Counsel submits before us that these additional grounds of appeal may be admitted, as it is being purely a legal issue and all facts are already on record. On the other hand, Learned DR for the Revenue pleaded that assessee did not raise these legal issues during the appellate proceedings, before the Id CIT(A), therefore, at this stage the assessee can not raise additional ground on legal issue. We note that the facts relating to additional grounds on legal issues were there before the Id.CIT(A). Hence, we find that it is purely a legal issue and all facts are already on record which goes to the root of the matter and no further inquiry is required for deciding the same as all facts are already on record. Therefore, in the light of ratio laid down by the Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd., vs. CIT* (1998) 229 ITR 382 (SC), we admit the additional grounds, on legal issues, raised by the assessee.

10. The relevant material facts, as culled out from the material on record, are as follows. The assessee before us, (Shri Shamjibhai Sadhabhai Kangad) is an individual and is engaged in various business concerns in the capacity of proprietor, partner, director, and member with other family members of Kangad Family. All the member of the family are collectively engaged in the business, like Salt Manufacturing, Civil Construction, Water Supply, Transportation, Coke Manufacturing etc. The group is popular by the name of “Neelkanth Group”. Main business concerns of the group include Neelkanth Salt Supply, Neelkanth Enterprise, Neelkanth Chem Industries, Neelkanth Coal Manufacturing Pvt Ltd, Neelkanth Impex, Ahir Salt and Allied Products Pvt Ltd, Patel Construction Company, One Chemical Company, Ayush Procon Private Limited, Kandla Packaging Private Limited, Green Trading Enterprise, Omkar Salt Works, Shri



Pingleshwar Salt Industries etc. On 10.11.2020, a search & seizure operation was initiated by the income tax department and search were carried out at 41 premises (including 21 lockers) and a survey action u/s 133A of the Act. All the major persons and business concerns of the Neelkanth Group were covered under this search and seizure operation. During the search proceedings, various incriminating documents, containing unaccounted transactions, pertaining to the assessee and his business concerns were recovered. For the assessment year under consideration, the assessee has filed an Income-tax return (ITR) on 29-11-2014, declaring income of Rs. 25,05,7,070/-. Consequent to the search dated 10/11/2020, notice under section 153A of the Act has been issued. In response, to the notice, the assessee has submitted before the assessing officer to treat the original income tax, return (ITR), as if, filed against notice u/s 153A of the Act. Subsequently, notice u/s 143(2) of the Act, has been issued and necessary details have been called for vide notices u/s 142(1) of the Act from time to time.

11. During the search proceedings, one of the major incriminating materials was seized in the form of Digital Data from the residential premise of Shri Naran Maheshwari, in a pen drive, named as 'NG'. Shri Naran Maheshwari is an accountant of Neelkanth Group as confirmed by Shri Mihir T. Kangad. During the search proceedings, the search team found Tally file from the premise of Shri Naran Maheshwari. The said pen drive contained a tally file by the name of "For CA Students from 01-04-2010-31-03-2017" where several unaccounted transactions carried on by members of the Neelkanth Group were recorded. The said tally data contained only unaccounted transactions, as Shri Mihir Teja Kangad (Key person) was unable to reflect any of the transactions reported in the tally data in the regular books of accounts. During the search operation, the search team also found the loose cash movement sheets and cash vouchers. Apart from the above, several seized documents during the course of search from the premise of Shri Vijay Nagda, who is a cashier of the Neelkanth Group, also revealed



unaccounted transactions by the members of the Neelkanth Group. The material seized from premise of Shri Vijay Nagda revealed hand written as well as computerized vouchers. It was understood from the data that these vouchers made by Shri Vijay Nagda forms the basis for recording of unaccounted transactions in the tally data seized from premise of Shri Naran Maheshwari. Both the seized material, that is, Tally file and the loose cash movement sheets and cash vouchers contained unaccounted cash transactions pertaining to almost all the group concerns. Besides, the documents seized from other business premises of the assessee and his group concerns were also highlighting many suspicious transactions which required to be confronted to the assessee and all the group members of the Neelkanth Group for better clarity. Therefore, during the assessment proceeding vide notice u/s 142(1) of the Act, the assessee as well as the other family members and group concerns (whose proceedings were running simultaneously) have been asked to explain the transactions, appearing in the above mentioned seized Tally data, Loose cash movement sheets, Cash vouchers and the documents seized from the assessee`s own premises, as well as from other premises that pertained (directly or indirectly) to the assessee or contained the name or the initials of the name of the assessee or any of his business concerns.

12. In response to the above notice of the assessing officer, the assessee submitted his reply before the assessing officer, along with documentary evidences. The assessee, submitted that “Neelkanth Group” consists various companies, partnership firms, proprietorship firms of family members and HUFs and all such group / associated concerns are engaged in the diversified business activities such as salt manufacturing, salt trading, transportation and logistics, liquid cargo storage terminal, construction contract, manufacturing of packaging materials, trading in automobile spare parts, custom house agent, renting of godown and warehouse etc. The pioneer and founder of the salt manufacturing business, was Late Shri Sadhabhai Ramjibhai Kangad, who has installed the first washery plant



way back in 1968 in the name of Neelkanth Salt Works. During the course of time, descendants of Late Shri Sadhabhai Kangad and their spouses and junior members have joined the age-old family business and all the family members have made serious efforts which resulted into exponential growth of the Group in last two decades. Neelkanth Group is leading salt manufacturer, in Gujarat having annual salt production capacity of more than 5,00,000 metric tonne. Currently, Neelkanth Group as a whole consist of the following members:

<i>Descendants of Late Shri Sadhabhai S. Kangad</i>	<i>Spouse of first generation</i>	<i>Second generation</i>
<i>Arjanbhai S. Kangad</i>	<i>Devaiben A. Kangad</i>	<i>Khimji A. Kangad</i>
<i>Khengarbhai S. Kangad</i>		<i>Chandradeep K Kangad</i>
<i>Tejabhai S. Kangad</i>	<i>Jashumatiben T. Kangad</i>	<i>Mihir T. Kangad</i>
<i>Shamjibhai S. Kangad</i>	<i>Ratanben S. Kangad</i>	<i>Hetab S. Kangad Raj S. Kangad</i>

Apart from the above, various members of extended family such as in-laws of Shamjibhai S. Kangad and in-laws of other family members and close friends & relatives are also having joint venture / partnership with Neelkanth Group in various business verticals and consequently, all such persons are also part and parcel of Neelkanth Group family. Name of some extended family members are as under:

- (i) Shri Shamjibhai Tejabhai Ahir & his family;
- (ii) Shri Devjibhai Bhimjibhai Dangar & his family;
- (iii) Shri Dayal Rajan Pillai and his family;

Though, all of the above family members are engaged in the business activities either individually or through their HUF or in partnerships /shareholding with other family members or outsider friends or relatives, at the end of day we are



part and parcel of "Neelkanth Group" headed by Shri Shamjibhai Tejabhai Ahir. Shri Shamjibhai Ahir is a group leader and family head used to take all the strategic decisions for majority of the businesses for and on behalf of family member or associated concern.

13. The assessee submitted before the assessing officer that aggregate turnover of the various business verticals operating under the banner of Neelkanth Group is around Rs. 500 to 700 crores per annum and net taxable profit/income declared is around Rs. 15 to 20 crores per annum. Thus, the group as a whole is consistent and high taxpayer in the region. A chart showing year-wise turnover, GP / NP declared, returned income, secured & unsecured loans received by various concerns of Neelkanth Group was submitted before the assessing officer. It was submitted that various business activities carried out by the Neelkanth Group is mainly with the aid of term loans and working capital credits as well as unsecured loans sanctioned by various banks, financial institutions and private players. The Neelkanth Group, as a whole is having net exposure of debt to the extent of around 125 to 150 crores in addition to the deposits of the directors, shareholders and relatives in the companies. A chart showing year-wise exposure of debt was submitted before the assessing officer. It was submitted that properties & assets mortgaged for taking finance from the bank are all accounted for in the books of account of relevant group concern or in the books of account of family members / director of Neelkanth Group. Therefore, there is no case of any unaccounted or undisclosed asset held by any of the members of Neelkanth Group. Search and seizure action u/s. 132(1) of the Act was carried out at the residential premises of family members and business premises of Neelkanth Group on 10<sup>th</sup> November 2020. During the course of search at assessee`s premises, not a single incriminating document or data evidencing any source of unaccounted income or unaccounted investment or asset etc, was found. As regard the cash and gold seized during the course of search, assessee had already furnished detailed



clarification along with supporting evidence. Therefore, assessee stated that there is no case of any undisclosed income or source of such income. It was submitted that majority of salt sale by Neelkanth Group is out of India and to listed/multi-national companies in India. All such sales are made through banking channel and duly accounted for in the audited financial statements of group concerns and the same is verifiable from the financial statements and books of account produced during the assessment proceeding. Therefore, there is no any instances of unaccounted sales made by the assessee.

14. In the impugned notice issued by the assessing officer under section 142(1) of the Act, it was alleged by the assessing officer that during the course of search proceeding, at the residential premises of Shri Naran B Maheshwari, some digital data in his pen-drive was seized and on the basis of such data (Tally Data), it was alleged that Neelkanth Group have carried out unaccounted transactions. In this connection, it was clarified by the assessee that assessee did not accept the ownership of alleged data, as assessee had not made or instructed to make entries in alleged Tally Data and the entries made in such data are not correct and complete. Attention of the assessing officer was invited to the replies given by assessee's nephew, Mihir Kangad, in his statement recorded u/s 132(4) of the Act, on 23.12.2020, where specific queries were raised by DDIT(Inv), Unit-1(3), Ahmedabad, on tally data in revocation of PO. Further, it was also clarified that Shri Naran B Maheshwari is not an employee or accountant of Neelkanth Group, but he is only a part-time employee and accountant of one of the group concerns namely M/s. Mihir & Co. Apart from keeping books of account of M/s. Mihir & Co., Shri Naran Maheshwari also doing accounting job-work for various other parties and it appears that common pen-drive used by multiple people and for multiple work assignments have been found from his possession. Thus, digital



data stated to have been recovered from the possession of Shri Naran B Maheshwari is not authentic and correct. In support, of this, the assessee submitted sworn affidavit of Shri Naran B Maheshwari, before the assessing officer. Further, it was seen that during the search or post-search investigation, no explanation or clarification regarding alleged data has been sought from Shri Naran B Maheshwari. Therefore, cognizance taken against the Neelkanth Group without hearing the words from Shri Naran Maheshwari, is totally unjustified. On verification of averments made by Shri Naran Maheshwari in his affidavit, it may be seen that he is unaware regarding the alleged data recovered from the pen-drive from deleted segment as he has not kept or maintained any such data. Therefore, when person from whose possession alleged data was found is denying having any knowledge of such data, author of such data is unknown and purpose behind maintaining such erroneous data is not clear. Therefore, assessee submitted that he is not liable to explain all the entries, particularly in absence of there being any corroborative evidences of generation of unaccounted income and application of same in any assets or investment etc.

15. Before the assessing officer, it was submitted that certain bills / vouchers etc, stated to have been seized from the same pen-drive of Shri Naran B Maheshwari and in loose paper file from the residential premises of Shri Vijay Nagda are also misinterpreted and entries of such vouchers / bills in Tally Data are not correct. Further, all such documents are also found from the premises of third party, for which no adverse inference could have been drawn in the ongoing assessment proceeding. It was submitted that for making addition on the basis of any material including document found during the course of search at the premises of the third party, the procedure laid down under section 153C of the Act is required to be followed and if the said procedure has not been followed, proposed additions /



adjustments cannot legally be made. Meaning thereby, no addition could have been made under section 153A of the Act, in the case of the assessee in respect of incriminating materials found from the course of search at the premise of the third parties. In this connection reliance was placed on the following judicial pronouncement:

(i) Hon'ble Delhi ITAT in case of Trilok Chand Chaudhary Vs. ACIT [IT Appeal No. 5870 (Delhi) of 2017] pronounced on 20-08-2019. The Tribunal after considering arguments of the parties held as under:

*"15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person."*

*5.9 The facts of the case of Vinod Kumar Gupta (supra) are distinguishable with the facts of the instant case. In the case of Vinod Kumar Gupta (supra) material found from Sh. S.K. Gupta was used in assessment proceeding under section 153A of the Act in the case of Sh. Vinod Kumar Gupta. But in that case warrant in fact was issued in the name of Sh. SK Gupta, Gaurav Gupta, Sh. Vinod Kumar Gupta, Ms. Veena Gupta, Sh. Vikas Gupta, and Ms. Madhu Gupta. The Panchnama drawn was also signed by both the assessee (Sh. Vinod Kumar Gupta) and SK Gupta. The statements of both Sh. S.K. Gupta and Sh. Vinod Gupta were recorded on the same date. The Hon'ble High Court held that as search and seizure was conducted through one authorization, there was no requirement of issuing separate notice under section 153C of the Act and following separate procedure under section 153C of the Act. But in the instant case, separate search warrant has been issued in the case of the assessee as well in the case of Sh. Ashok Chowdhary and the Assessing Officer has used the material found in the course of search at the premise of Sh. Ashok Chowdhary, which is not permitted in view of the express provision of the law.*

*5.10. The addition made by the Assessing Officer in violation of the procedure provided in the Act is bad in law and void-ab-initio and cannot be sustained. Accordingly, the addition of Rs. 3.3 crore, made protectively on the basis of the documents found from the premises of the third party, by the Assessing Officer and upheld by the Ld. CIT(A) on substantive basis, is deleted. The ground No. 6.2 of the appeal is accordingly allowed."*

16. On the basis of the above judgement, the assessee submitted before the assessing officer that addition proposed on the basis of alleged digital data seized



or recovered from the premises of third party without invoking the correct provision of law is patently illegal.

17. Before the assessing officer, it was also submitted that all the members of Nilkanth group have denied any link with the alleged Tally data. Further, no corroborative evidence related to such data have been found from any of the residential or business premises of Neelkanth group and family members. Hence, the nature of data does not point out reliable presumption under section 292C of the Act, against the Neelkanth group. The assessee submitted that during the revocation of prohibitory, order (PO) on 23<sup>rd</sup> December 2020, and the same was confronted to Shri Mihir Teja Bhai. In the statement recorded from Shri Mihir, he had not accepted any of the telly entries in the digital data or papers seized from the premises of employees, namely, Shri Naran Maheshwari, and Shri Vijay Nagda. Sri Narayan Maheshwari and Shri Vijay Nagda both have stated that the data in tally are not authentic and there are so many adjustment entries and deletion of lot of entries. Therefore, Telly data should not be relied on. It was also submitted that various entry in disputed data represents the investment in properties, which in fact have not been purchased by any of the family members or group concerns of Neelkanth group.

18. The assessee also submitted before the assessing officer that during the course of managing and operating various entities of Neelkanth Group, there is chance to remain some technical mistake, error, omission, commission, unintentional defect or discrepancy. Further, most of the accounting and administrative work have been entrusted to the employees and accounts and there is chance of remain human or clerical error, which is practically not possible to rectify. Therefore, in order to put quietus to all such issues, probable errors / omissions, technical



defects, disallowances, discrepancies etc. and with a view to avoid long drawn litigation and to buy peace of mind, the assessee shall have no objection if the additional business income to the extent of Rs. 10.00 crore is estimated and added in his hands on ad-hoc basis being a head of family members of Neelkanth Group and on behalf of group as whole for all the years for which assessment proceedings are undergoing subject to the condition that no penalty or any harsh action under the Income tax Act or any other law shall be initiated by the Department or any other department on such voluntary offered ad-hoc estimated business income. The assessee submitted that source of cash and gold found / seized during the course of search has satisfactorily been explained and hence, there is no case of any unaccounted investment. The book results declared by the various entities of Neelkanth Group are much higher or almost at par with the industrial average profitability. Further, there is no allegation or any evidence related to unaccounted sales made by the Group since most of sales of Salt is made outside India and in India to multinational / listed companies. Therefore, if the high-pitched addition would be made by blindly taking cognizance of random & erroneous entries in digital data and documents found from employees, then it would be resulted into absurd and arbitrary result. The huge debts and finance from banks and private institutions taken by the Neelkanth Group and cost of finance has regularly been served by the Group. Therefore, any high-pitched or unreal addition in the taxable income of the Group would lead to ruin the Group, where more than 200 people are working. As regard the clarification / explanation on various documents seized during the course of search from the premises of Shri Vijay Nagda, it was submitted by the assessee that he had not prepared or maintained any such documents and also, none of such documents have been prepared on his instructions.

19. So far as documents seized from the other parties, the assessee submitted before the assessing officer that he had no idea or knowledge regarding such



documents and thus, it is not possible for him to comment on the same. The assessing officer had alleged that salt sales bills issued by various entities controlled by Shri Naran B Maheshwari and his family members are bogus, in this connection, assessee submitted that allegation is totally baseless and devoid of facts. In facts, various entities of Neelkanth Group have actually purchased salt from various small farmers/traders/agariyas including entities owned and operated by family members of Naran B Maheshwari. Not only that, such salt purchased are processed in Neelkanth Group's washery plants and finally, finished goods have been sold / exported. Therefore, when sale of salt has not been doubted, there is no question of doubting the purchase of raw-salt.

20. Without prejudice to the above, the assessee also submitted before the assessing officer that if purchase would be disallowed then gross profit would show absurd and impractical result and hence, allegation of bogus purchase is completely illogical. The averments made by Shri Naran Maheshwari in his statement was clarified by him in his duly sworn affidavit. Here it is relevant to emphasise that salt procurement and manufacturing industries by and large are driven by the unorganised and unskilled labourers / agents and village people, staying remotely in desert or forest there for they always demand payment in cash and we need to disburse cash for procurement as also to labourers / machinery operators and fuel dealers. Thus because of the peculiar nature of this industry in which assessee is dealing, there are many agents to whom assessee assigned work for coordination. Thus, the purchases shown to have been made from various persons and family members of Naran B Maheshwari was out of business expediency and are nothing but expenses towards the salt purchase. The assessee also provided details of transactions made by him in his business concerns with foreign company namely Swiss Hong Kong International Corporation Limited or Swiss Hong Kong International Limited or both. In this regard, Shri Mihir



Kangad in his statement recorded u/s. 132(4) of the Act dated 23.12.2020 categorically explained that Swiss Hong Kong International Corporation Ltd is the subsidiary of SRK Chemicals Ltd. Further, assessee submitted that he is one of the directors in M/s. SRK Chemicals Ltd., which has made investment in equity of Swiss Hongkong International Corporation Ltd. and also carried out sales transactions with said foreign company. The Ledger account of Swiss Hongkong International Corporation Ltd, from the books of account of SRK Chemicals Ltd, was submitted. It was submitted that Swiss Hong Kong International Corporation Ltd. (hereinafter referred as "SHICL") is wholly owned subsidiary of SRK Chemicals Limited (hereinafter referred as "SRK") incorporated on 30th September 2015 and it's first audit report is for the period 30th September 2015 to 31 December 2016. The SRK was engaged in the business of trading/exporting of Salt to various countries including China since long. However, the company was not able to capture sufficient market in China and hence, in mid of 2015, one Agent Mr. Du Qingdao, from China came into contact with Shri Hetab Kangad and shown willingness to handle the marketing in China subject to establishing office in Hongkong and he agreed to look after entire export to China business from Hongkong office. Thereafter at his instance, the company SHICL was incorporated in Hongkong wherein SRK has invested 100% equity and Hetab Kangad was the only director of that company. Equity Investment made by SRK has consistently been shown in the books of account under the head Investment/other current assets. Since, Hetab Kangad was only director in foreign company, he was signatory in bank account opened by SHICL. The said signatory authority has been disclosed by Shri Hetab Kangad in their returns of income filed during the assessment proceeding. In view of the above, beneficial interest of SRK in the foreign company as well as signatory authority of Hetab Kangad in foreign bank account of SHICL has duly been disclosed before ROC/MCA/RBI and Income-tax Department.



21. During the course of post-search investigation, assessee has submitted page-wise clarification / explanation to the seized documents. During the course of search at assessee's premises situated at BBZ-S60, Zanda Chowk, various files containing document related to lease application in respect of Government land in name of various persons were found. Along with the application for availing leasehold rights, power of attorneys executed in favour of Shri Shamjibhai Kangad, Mihir Kangad, Hetab Kangad and Raj Kangad were also found. In connection, it was submitted by the assessee that for manufacturing the salt, huge chunk of barren land is required, which is generally vested in the ownership of State Government or Kandla Port Trust. Since, such lands are not capable of producing any agricultural produces or civil construction, the same were allotted to salt farmers/agariyas through long-lease. In this process, various entities and individuals/agariyas apply for allotment of lease through Collector/Mamlatdar or any other appropriate authorities. Since, assessee is in the salt manufacturing business since more than 50 years and assessee is amongst top salt manufacturers in Gujarat, assessee had good infrastructure, team for quality production and experienced clerical staff to cope up any challenge in the market. Since assessee is in this line of business since long, assessee's office clerical staff is fully conversant with the compliance procedures in respect of bidding process for availing lease for salt manufacturing, maintaining long lease land in good condition etc. Many assessee's friends and relatives interested in getting leasehold land for salt manufacturing process have applied in Collector / Appropriate authority, however, as the process of clearance is lengthy and cumbersome, they appointed assessee as their POA holder and to facilitate them in clearance process. Though the applications were filed by them, however just to co-operate in clearance process, assessee accommodates them. Thus, the power of attorney find placed in file is just to facilitate lease applicant and nothing else.



22. The assessing officer has gone through the above reply of the assessee and noticed that judicious interpretation of the seized documents can only be done when it is holistically read and understood. If the seized document are read and understood holistically then it can be said that expenses have been incurred though in the unaccounted books. Under these circumstances, an estimation of a reasonable profit element on the gross unaccounted receipts requires to be made in order to ascertain the quantum of Real Income of the assessee. The assessing officer noticed that principle of taxing Real Income is also recognized by the Hon'ble SC in the case of National Co-Operative Development Corporation vs. CIT (2020) 427 ITR 288 (SC) wherein the hon'ble Apex Court has observed as under -

*"38. We may record here that income has to be determined on the principles of commercial accountancy. There is, thus, a distinction between 'real profits' ascertained on principles of commercial accountancy. In the case of Poona Electric Supply Co. Ltd. v. CIT [1965] 57 ITR 521 (SC) this Court has held that income tax is on the real income. In the case of a business, the profits must be arrived at on ordinary commercial principles. The scheme of the IT Act requires the determination of 'real income' on the basis of ordinary commercial principles of accountancy. To determine the 'real income', permissible expenses are required to be set off. In this behalf, we may also usefully refer to the judgment in CIT v. S.C. Kothari [1971] 82 ITR 794 (SC) where the following principle was laid down:*

*"6. ... The tax collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business..."*

23. The assessing officer also noticed that the profit element on the unaccounted receipts needs to be on a slightly higher side than the industrial norms. The benefits accrued on account of operating in cash economy by way of not paying due taxes and levies on the unreported transactions cannot be ignored. Further, the statutory disallowances as per various provisions of the Income-tax Act for incurring cash expenses and violation of other provisions also needs to be considered before arriving at the value of real income earned from the unaccounted



transactions recorded in the seized Tally data as well as the loose cash sheets. In view of the above discussion, and taking reference from the theory of taxing 'Real Income' of the assessee, the profit of the assessee for various years based on the unaccounted transactions, revealed from the data seized during the search was determined by the assessing officer as follows:

<b>F.Y.</b>	<b>Receipts</b>	<b>20% profit</b>
2010-11	2,85,95,931	57,19,186
2011-12	6,27,40,513	1,25,48,103
2012-13	9,58,11,005	1,91,62,201
2013-14	16,14,47,115	3,22,89,423
2014-15	16,00,96,192	3,20,19,238
2015-16	17,15,48,774	3,43,09,755
2016-17	7,71,39,824	1,54,27,965
2017-18	68,12,514	13,62,503
2018-19	30,19,760	6,03,952
2019-20	48,91,67,675	9,78,33,535
2020-21	7,72,02,570	1,54,40,514
<b>Total</b>	<b>1,33,35,81,873</b>	<b>26,67,16,375</b>

It is necessary to mention here that the profit percentage after the rearrangement of the entries in the seized data on basis of accounting principles is 5.56%. However, keeping in view of the discussion made above the profit is being estimated at 20%.

24. The assessing officer further observed that the year- wise net receipts of cash unsecured loans require to be taxed, as whole, being a capital receipt, as assessee has failed to provide the details of persons from whom such unsecured loans have been taken. Therefore, as the source and natures of the said transactions are not disclosed by the assessee, the same needs to be added in the hands of the assessee. Further, as the said loans are taken in the name of Neelkanth Group, addition for



the same is being done in the hands of the assessee. In view of the above, the net balances of year wise unsecured loans in the seized Tally data was added by the assessing officer, as unexplained money within the meaning of provisions of section 69A r.w.s. 115BBE of the Act , as follows:

<b>F.Y.</b>	<b>Unsecured Loans</b>
2010-11	51,85,014
2011-12	1,89,48,003
2012-13	1,41,79,841
2013-14	2,77,93,271
2014-15	1,09,03,411
2015-16	6,80,31,027
2016-17	9,17,48,459
2017-18	broken data
2018-19	broken data
2019-20	broken data
2020-21	broken data
<b>Total</b>	<b>23,67,89,026</b>

25. The assessing officer also held that the closing cash balance as on 31-03-2017 is Rs. 0/-, as per the seized tally file containing unaccounted transactions from FY 2010-11 to 2016-17.



Cash-in-hand Group Summary 1-Apr-10 to 31-Mar-17				Page 1
Particulars	Opening Balance	Transactions		Closing Balance
		Debit	Credit	
Cash	1,28,59,037.37 Dr	2,39,63,29,537.30	2,40,91,88,574.67	
<b>Grand Total</b>	<b>1,28,59,037.37 Dr</b>	<b>2,39,63,29,537.30</b>	<b>2,40,91,88,574.67</b>	

The assessing officer noticed that loose cash flow sheets from 01-08-2020 to 09-11-2020 have been seized from the premise of Shri Vijay Nagda and the opening cash as per the oldest loose cash flow sheet seized from the premise of Shri Vijay Nagda is Rs. 3,40,40,206/-. The assessing officer was of the view that this indicates that during the period from 01-04-2017 to 31-07-2020, cash of Rs. 3,40,40,206/- has been generated. Hence, the same was also added by the assessing officer as unexplained money within the meaning of section 69A r.w.s. 115BBE of the Act.

26. Accordingly, year-wise unaccounted incomes were computed and calculated by the assessing officer as follows:

F.Y	Total addition (A) + (B)	20% profit (A)	Others (B)	Remarks for others
2010-11	1,09,04,200	57,19,186	51,85,014	Unsecured loans
2011-12	3,14,96,106	1,25,48,103	1,89,48,003	Unsecured loans
2012-13	3,33,42,042	1,91,62,201	1,41,79,841	Unsecured loans
<b>2013-14</b>	<b>6,00,82,694</b>	<b>3,22,89,423</b>	<b>2,77,93,271</b>	<b>Unsecured loans</b>
2014-15	4,29,22,649	3,20,19,238	1,09,03,411	Unsecured loans
2015-16	10,23,40,782	3,43,09,755	6,80,31,027	Unsecured loans
2016-17	10,71,76,424	1,54,27,965	9,17,48,459	Unsecured loans
2017-18	13,62,503	13,62,503	--	--
2018-19	6,03,952	6,03,952	--	--
2019-20	9,78,33,535	9,78,33,535	--	--
2020-21	4,94,80,720	1,54,40,514	3,40,40,206	Opening cash on hand on 01.08.2020
<b>Total</b>	<b>53,75,45,607</b>	<b>26,67,16,375</b>	<b>27,08,29,232</b>	

Hence, for the assessment year 2013–14, the assessing officer made addition in the hands of the assessee, 20% of the total unaccounted receipt **Rs.3,22,89,423/-**



and on account of unaccounted unsecured loan under section 69A r.w.s. 115BBE of the Act, at **Rs.2,77,93,271/-**.

27. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has, on merit, partly allowed the appeal of the assessee, by giving the telescoping benefit of unsecured loan with estimated profit and then confirmed the estimated addition at the rate of 20%, on unaccounted receipts, which we shall deal separately in this order .

28. First, we should adjudicate the additional ground raised by the assessee, on legal issue. We note that assessee had also raised technical and legal issue during the appellate proceedings before the learned CIT(A), which the assessee has raised before this Tribunal, by way of additional grounds, in three assessment years (AYs) 2012-13, 2013-14 and 2014-15, which is reproduced below, again, for ready reference, as follows:

*“On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting assessee’s plea that notice u/s 153A of the Act could not be issued under fourth proviso of said section in absence of any "asset" representing the alleged undisclosed income.”*

About the above technical ground/ legal ground, the assessee submitted before the learned CIT(A) that in order to initiate proceedings u/s 153A for a period beyond six years, there should be undisclosed income and it should be represented in the form of assets based on tangible materials, in excess of Rs. 50 lacs. On this basis, assessee had claimed that since no tangible evidences and assessee's investment in tangible asset has been found, the proceedings for the assessment years (AYs), 2012-13, 2013-14 and 2014-15, initiated u/s 153A of the Act, is bad in law, and therefore, assessment order may be quashed.



However, the learned CIT (A) rejected the above arguments of the assessee and noted that on perusal of the satisfactions recorded by the assessing officer before issuing notice u/s 153A for assessment years (AYs) 2011-12 to 2014-15, it was observed that the assessing officer has relied upon the following documents and data, which as per the assessing officer reflects the assessee's unaccounted income represented by the asset within the meaning of Explanation- 2 to fourth proviso to section 153A of the Act:

SHAMJIBHAI SADHABHAI KANGAD			
AY	Seized Material Reference	Amount	Observation of AO
2011-12	Vijay Nagda Annx. A-12 Page No. 187	15,700	Unaccounted cash payment made for property situated at Survey No. 52, Tuna, Rampar.
2011-12	Vijay Nagda Annx. A-21 Page No. 87	8,000	Unaccounted cash payment made for property situated at Chopadva Survey No. 273
2011-12	Vijay Nagda Annx. A-18 Page No. 46	2,98,640	Unaccounted cash payment made for property situated at Khetar at Anjar
2012-13	Tally file	15,00,000	Unaccounted contribution of the appellant for the benefit of Neelkanth Group entities.
2012-13	Tally file	3,30,280	Unaccounted cash payment for purchase of gold coins.
2013-14	Vijay Nagda Annx. A-17 Page No. 218	55,00,000	Unaccounted cash payment made for purchase of property situated at Plot No. 22, Sector-2 by the appellant along with Babu Velji Humble having the appellant's share in the property at 50%.
2014-15	Vijay Nagda Annx. A-17 Page No. 218	1,66,57,250	

However, during the appellate proceedings, the assessee had furnished clarification on each of the above seized documents by stating that either the noting in the seized documents or data are not in the nature of "asset" as defined under Explanation -2 or such property has not been purchased by the assessee. The assessee submitted the revenue records of properties, as referred to by the



assessing officer, which shows that the property had not purchased or held by the assessee or his family members but some third persons. The assessee argued that none of the seized documents and data relied upon by the assessing officer can be treated as tangible evidence which is a pre-requisite for invoking extended period of limitation under fourth proviso to section 153A of the Act. The assessee relied on the speech of Hon'ble Finance Minister, while introducing Finance Bill, 2017 and memorandum to Finance Bill, 2017 which put much weightage on "tangible evidence" for initiating assessment proceeding under fourth proviso to section 153A of the Act.

29. However, the learned CIT(A) rejected the above contention of the assessee. The ld. CIT(A) observed that on perusal of the satisfaction note recorded by the assessing officer, along with relevant copies of seized documents, the nature of transactions recorded in such documents and data are related to cash and cheque payment made for purchase of immovable properties. Therefore, there is no doubt about the nature of transaction in such seized data. So far as assessee's contention that he has not purchased such properties, the said facts cannot be looked by the assessing officer at the time of recording primary satisfaction on the basis of seized documents. Further, though the purchaser and seller of the properties referred by the assessing officer are third persons, it is an undisputed fact that proper chain and sequence of transactions in such properties are found noted in tally data. These contents of the seized materials prove the fact that, cash was paid for investments in properties. Since these properties are assets and as there are cash inflow/outflow, therefore, these are categorized as "assets" within the meaning of proviso to section 153A of the Income tax Act. Therefore, ld.CIT(A) held that assessing officer is completely justified in holding that the assessee has earned unaccounted income which is represented by the assets, thus, invocation of fourth proviso of section 153A for assessment years (AYs) 2012-13, 2013-14 and 2014-15, by the assessing officer is correct and notice issued u/s 153A was



held to be valid. Therefore, learned CIT(A) rejected, the above legal ground of the assessee.

30. Aggrieved by the above action of the learned CIT(A), the assessee is in appeal, before us, on the same legal issue, for assessment years(AYs) 2012-13, 2013-14 and 2014-15.

31. Shri Mehul Ranpura, Learned Counsel for the assessee, vehemently argued that satisfaction note for initiating proceedings, under section 153A of the Income tax Act 1961, is defective. The learned Counsel stated that on the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting assessee`s plea that notice u/s 153A of the Act could not be issued under fourth proviso of said section in absence of any "asset" representing the alleged undisclosed Income. The Id. Counsel submitted that no name of the assessee, is there in the seized material and assessee has not purchased the property mentioned by the assessing officer, in the satisfaction note and in order to reopen the assessee`s case, u/s 153A ( fourth proviso), there should be “asset” of Rs.50 lakhs or more. As the “asset” is not owned by the assessee, which is mentioned in the seized documents and satisfaction note. Therefore in order to assess the amount under section 153A of the Act, particularly in the assessment in the new regime, if the amount escaped is not beyond Rs.50 lakhs, then assessment is not permitted u/s 153A of the Act, vide fourth proviso there of. The Id. Counsel for the assessee also took us through the relevant para of the satisfaction note u/s 153A of the Act, for assessment year 2014-15, which is reproduced below:



**PLOT NO. # 55. SECTOR-2 PURCHASE (50%)**  
Ledger Account

1-Apr-2010 to 31-Mar-2017

Page 1  
Credit

Date	Particulars	Vchl Type	Vchl No	Debit	Credit
				40,00,000.00	
22-1-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50%	Payment		15,00,000.00	
2-3-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYALJI	Payment		55,00,000.00	55,00,000.00
	Dr <b>Closing Balance</b>			55,00,000.00	55,00,000.00
1-4-2013	Cr <b>Opening Balance</b>			1,00,00,000.00	
28-5-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - PAID TO ROHITBHAI	Payment		36,00,000.00	
17-6-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYALJI	Payment		20,00,000.00	
22-7-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYALJI	Payment		40,000.00	
24-7-2013	Cr <b>Cash</b> CASH PAID FOR PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - CASH PAID TO SUNIL BHAI SAI FOR SERVICE WORK GIVEN TO MAHMADBHAI KHODJA - INDUCTION SHAMJIBHAI	Payment		2,24,750.00	
5-10-2013	Cr <b>Cash</b> CASH PAID PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - FOR FINAL CLEARANCE, REGISTRATION & DALATS HASTE BHAYALJI (RS. 8500/- * 4250) REGISTRATION + 2000/- * 3500 DALATS CLEAR = 33400/- * 2 = 66800 DALATS TOTAL 224750/-	Payment			13,02,500.00
	Dr <b>Cash</b> CASH RECEIVED AGAINST CHEQUE PAID PLOT NO. 55 SECTOR-2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% (RS.50000/- * 2 = 250000 LESS 15,00,000/- (217 * 305 CASH) 12 BAKK)	Receipt		2,07,64,750.00	13,02,500.00
	Dr <b>Closing Balance</b>			2,07,64,750.00	2,07,64,750.00

The above paper is on page no. 218 of seized document, inventoried as Annexure A-17. The learned Counsel for the assessee submitted before the Bench that the property mentioned in the above document, ( that is, immovable property, situated at plot no. 55, sector 02, had never been purchased by the assessee and the assessee was not owner of the said property, at any point of time in the past, and in the present. No, any agreement of property is available with the Department ( revenue authorities), to say that property is in the name of the assessee. Moreover, no addition has been made by the assessing officer in the assessment order, in respect of the property mentioned in the satisfaction note, referred above. Hence, no “asset”, which is more than Rs.50,00,000/- was found by the revenue authorities, during the search proceedings, as per fourth proviso to section 153A of the Act. Moreover, no name of the assessee is mentioned in the said seized document. Hence, the satisfaction note, under section 153A is itself defective.



32. The learned Counsel for the assessee, further stated that for the assessment year 2012-13, the assessing officer has used the same seized document and property, that is, immovable property situated at plot no.55, sector 02. However, this property has never been purchased by the assessee, and no addition has been made by the assessing officer in the assessment order, based on the above property. Therefore, ld. Counsel contended that since the satisfaction note under section 153A are defective, therefore based on the defective satisfaction notes, the subsequent assessment proceedings are also defective, hence, assessment order passed by the assessing officer, under section 153A, for assessment year for assessment years (AYs) 2012-13, 2013-14 and 2014-15, may be quashed.

33. On the other hand, learned CIT-DR for the Revenue argued that all the “Satisfaction Notes” prepared by the assessing officer, under section 153A of the Act, were in accordance with the provisions of the Act. In all these assessment years, the “asset” escaped for assessment is likely to exceed Rs. 50 Lakhs. Further, this satisfaction is recorded, *prima-facie* and not by applying the scientific rules. The Assessing Officer, as well as, Ld. CIT(A) has examined these facts and the respective assessment order was framed, as per the provisions of the law.

34. In rejoinder, Learned Counsel for the assessee submitted that the satisfaction note was not approved by the higher authorities also, hence, satisfaction note is bad in law.

35. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that section 153A of the Act, deals with assessment in case of search or requisition and the fourth proviso to section 153A(1) (inserted by the Finance Act, 2017, w.e.f. 01.04.2017) provides that in case of a person where search is



initiated on or after 01.04.2017, no notice under this section shall be issued if the Assessing Officer has no books of account or documents or evidence found in the search which reveal that income represented in the form of asset has escaped assessment amounting to Rs.50 lakh or more in any assessment year. Therefore, we find that this Rs.50 lakh threshold is a statutory condition for reopening completed assessments under 153A of the Act for searches conducted post 01.04.2017, and the assessing officer has to observe this statutory condition without any fail. The essential requirements for “Satisfaction- Note” are that the Assessing Officer (assessing officer) must record a satisfaction note before issuing notice u/s 153A of the Act and such a satisfaction note should contain the following information Viz: (i) that a search was conducted, (ii) the incriminating material was found, (iii) the material so found pertains to the assessee, (iv) such satisfaction note should indicate undisclosed income represented in the form of an “asset” of Rs.50 lakh or more (for searches on/after 01.04.2017). Since these conditions are not satisfied, the jurisdiction assumed under section 153A of the Act should be quashed.

36. Moreover, the “satisfaction note” has not been approved by the higher authority. Hence, on this count the satisfaction note prepared by the assessing officer as per fourth proviso of sub-section(1) of section 153A of the Act, is bad in law.

37. We also find that no any property is in the name of the assessee, which is mentioned in the satisfaction note. We note that Hon`ble Supreme Court in the case of *CIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)* has held that the seized material must be “incriminating and relatable” to the assessee. Since the property mentioned in the satisfaction -note is in the name of third-party and not in the name of the assessee, therefore, there is no



nexus between the document and the assessee. In the “satisfaction- note” there must be a clear nexus between the document and the assessee, however, in the assessee`s case under consideration, there is no nexus between the document and the assessee. If there is no such nexus, assessment under 153A of the Act should fail, based on such defective satisfaction note.

38. For our analysis, a sample “satisfaction -note” for assessment year 2014-15 is reproduced below



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX  
DCIT/ACIT CENT-1, RKT

To, SHAMJIBHAI SADHABHAI KANGAD BBZ-S-60, ZANDA CHOWK GANDHIDHAM 370201, Gujarat India	
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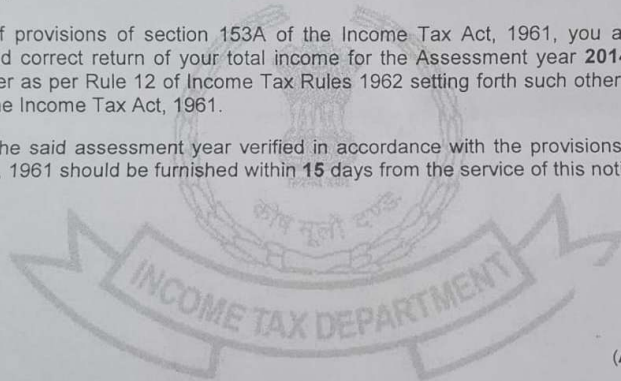
PAN: ADEPK3471E	AY: 2014-15	Dated: 27/03/2022
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**Notice under Section 153A of the Income Tax Act, 1961**

Sir/ Madam/ M/s,

In pursuance of provisions of section 153A of the Income Tax Act, 1961, you are hereby required to prepare true and correct return of your total income for the Assessment year **2014-15** in the prescribed form and manner as per Rule 12 of Income Tax Rules 1962 setting forth such other particulars as may be prescribed by the Income Tax Act, 1961.

The return for the said assessment year verified in accordance with the provisions of section 140 of the Income Tax Act, 1961 should be furnished within **15** days from the service of this notice.



  
(ARIHANT SINGHI)  
DCIT/ACIT CENT-1,



### Satisfaction note for initiating proceedings u/s 153A of the IT Act 1961

Name of the Assessee and address	Shamjibhai Sadhabhai Kangad Plot no. 34, Sector 02, Gandhidham, Kutch, Gujarat.
Status	Individual
PAN	ADEPK347IE
A.Y.	2014-15
Jurisdictional Assessing Officer	ACIT, Central Circle-1, Rajkot

In this case proposal for issue of notice u/s 148 of the Act was approved by the Ld. Pr. CIT (Central), Ahmedabad on 31.03.2021.

2. Accordingly a notice u/s 148 of the Act was issued on 31.03.2021 and duly served. The case of the assessee is connected with the search operations conducted on 10.11.2020 in Neelkanth Group of Gandhidham. However, in view of the amendment to section 153A inserted by Finance Act, 2017 w.e.f. 01.04.2017, the case of the assessee is covered under 4<sup>th</sup> proviso to section 153A of the Act because the income likely to escape the assessment would be more than fifty lacs and as such notice u/s 153A is required to be issued beyond the period of six years. For ready reference, extract from provision is reproduced:

**153A.** (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person **where a search is initiated under section 132** or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) **issue notice to such person requiring him to furnish** within such period, as may be specified in the notice, **the return of income** in respect of each assessment year falling within six assessment years and **for the relevant assessment year or years referred to in clause (b)**, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and **for the relevant assessment year or years :**

**Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

**Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

**Provided also** that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be



required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

*Explanation 1.*—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

**3.(i). Brief Details of the Assessee:**

The assessee during the year under consideration has furnished return of income u/s 139 on 29/11/2014 declaring total income of Rs. 2,50,57,070/-. The same was processed u/s 143(1) with no demand. Further, the case of the assessee was assessed u/s 143(3) for the year under consideration on 14.09.2016 and the income was assessed at Rs. 2,68,49,750/-. Then, a give effect order u/s 250 was passed in the case of the assessee on 13.09.2017 whereby the assessed income was reduced to Rs. 2,51,58,104/-.

**(ii). Brief details of information collected/received by the AO:**

A Search u/s 132 of the IT Act, in the case of Neelkanth group of Gandhidham was initiated on 10.11.2020. During the search, huge incriminating documents in physical forms such as summary of daybook, ledgers, credit vouchers, debit voucher, daily expenses ledger, counterfoil of payin slip, daily receipt & expenses ledger, gate pass, journal vouchers, invoice, cash loan details, cash book, handwritten pages, detail of cash transactions in land deal, calculation sheets, diaries, accounts related to Salt production etc. were found and seized. It is seen that the assessee group is involved in generation of unaccounted cash in business activities, unaccounted cash payments, unaccounted cash payments and cash receipts for transactions in immovable property, unaccounted cash receipts/payments (loans & advances), accommodation entries through bogus bills, accommodation entries against unaccounted cash, unaccounted cash generated from salt business, unaccounted interest payment/receipts in cash, unaccounted cash expenses, accommodation entries of unsecured loan, unaccounted purchase of gold through unaccounted cash, bogus fuel expenses, unaccounted lifestyle expenses, unaccounted cash sale of gypsum etc.

During the course of search, premise of the Shri Vijay Nagda, who is accountant of the Neelkanth group, was also covered. Shri Vijay Nagda has accepted carrying of unaccounted transactions. Further, he also



agreed that the unaccounted transactions are maintained and updated by the employees of the group as per directions of group owner.

Further, during the search at premise of Shri Vijay Nagda various documents were seized and inventoried. One such document was inventoried as page no. 218 of Annexure A-17. This page revealed unaccounted cash paid by the assessee in order to purchase an immovable property.

(iii). Analysis of information collected/received:

On perusal of the page no. 218 of seized document inventoried as Annexure A-17, it is observed that these pages contain details of cash payment for purchase of immovable property i.e. situated at plot no. 55, sector 02. The said immovable property has been jointly purchased by the assessee along with Babu Velji Humble. The assessee is holding 50% share in the property. The seized document is the ledger book where by such entries of payment has been found. The said document is produced hereby:

**PLOT NO. # 55, SECTOR-2 PURCHASE (50%)**  
Ledger Account

1-Apr-2010 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
22-1-2013	Cash	Payment		40,00,000.00	
	CASH PAID FOR PLOT NO. 55, SECT 02, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50%				
2-3-2013	Cash	Payment		16,90,000.00	
	CASH PAID FOR PLOT NO. 55, SECTOR 2, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYAJI				
	Dr	Closing Balance		55,00,000.00	55,00,000.00
1-4-2013	Cr	Opening Balance		55,00,000.00	55,00,000.00
28-5-2013	Cr	Cash	Payment	1,00,00,000.00	
	CASH PAID FOR PLOT NO. 55, SECTOR 2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - PAID TO ROHITBHAI				
17-6-2013	Cr	Cash	Payment	36,00,000.00	
	CASH PAID FOR PLOT NO. 55, SECTOR 2, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYAJI				
22-7-2013	Cr	Cash	Payment	20,00,000.00	
	CASH PAID FOR PLOT NO. 55, SECTOR 2, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - HASTE BHAYAJI				
24-7-2013	Cr	Cash	Payment	40,000.00	
	CASH PAID FOR PLOT NO. 55, SECTOR 2, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - CASH PAID TO BABU BHAIJI FOR 50% OF 1/2 SHARE GIVEN TO MAHARAJIBHAI KHOSLA (SISTER OF SHAMJIBHAI)				
5-10-2013	Cr	Cash	Payment	2,24,750.00	
	CASH PAID PLOT NO. 55, SECTOR 2 JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - FOR TOTAL DEARMENT, REGISTRATION & DALAM HASTE BHAYAJI. RS. 8500/- + 210 REGISTRATION + 2000/- + 3500 TOTAL CLEAR = 13400 / 2 = 21700 TOTAL 2,24,750/-				
	Dr	Cash	Receipt		13,92,500.00
	CASH RECEIVED AGAINST CHEQUE PAID PLOT NO. 55, SECTOR 2, JOINTLY WITH BABU VELJI HUMBLE & SHAMJIBHAI 50% - 115000/- + 280000/- = 3,95,000/- (17 + 20% CASH) 12 BANK)				
	Dr	Closing Balance		2,07,64,750.00	13,92,500.00
				<b>2,07,64,750.00</b>	<b>2,07,64,750.00</b>

(iv). Enquiries made by the AO as collected/received:

It is deposed by Sh Vijay Nagda the accountant of the group that group has carried out unaccounted cash transactions which never reflected in books of the group persons and remains unaccounted. Also, during the course of search proceedings and post search investigations the assessee has failed to provide cogent explanation for such unaccounted cash transactions in land deal. The cash is paid to some Rohitbhai and bhayaji.

(v). Findings of the AO:



On perusal of the incriminating document produced above it is seen that during the year under consideration the assessee along with the partners has made payment of Rs.1,52,64,750/- in cash. The dates of such transaction are 28.05.2013, 17.06.2013, 22.07.2013, 24.07.2013 and 05.10.2013. Further, the assessee has received back cash of Rs. 13,92,500/- on 05.10.2013. It is also pertinent to mention that the assessee was unable to cogently explain the contents of the document during the search and post search proceedings.

(vi). **Basis of forming reason to believe and details of escapement of income:**

In view of the above stated facts and findings, it can be said that assessee has atleast made unaccounted transaction **Rs.1,52,64,750/-** during the year under consideration for the purchase of the property. The assessee has received back cash of Rs. **13,92,500/-**. Further, during assessment proceedings for the concerned year, the information that reveals on money payment on purchase of immovable property was not available. It also pertinent to mention that even though the requisite details were called for by the assessing officer, however, in the course of submission assessee failed to disclose this fact.

4. Assessment Year 2014-15 is falling beyond the six assessment years, which is covered in the explanation of "relevant assessment year" as per the above mentioned amended provision. For the period from FY 2011-12 to FY 2013-14, documents or evidences reveal that the income, represented in the form of asset (unaccounted cash), which has escaped assessment amounts to or is likely to amount to Rs. **23987530/-** (minimum) which is more than Rupees Fifty lacs in the relevant assessment year or in aggregate in the relevant assessment years and the assessee could not explain this income.

5. Under the circumstances, in view of the 4th proviso to section 153A of the Act the case of the assessee is covered by section 153A of the Act and as issue notice u/s 153A of the Act for AY 2014-15.

(Arihant Singhi)  
Deputy Commissioner of Income-tax,  
Central Circle-1, Rajkot

Place : Rajkot  
Date : 27.03.2022

39. From the above "satisfaction- note" it is vivid with that if the assessing officer records a "satisfaction note" without fulfilling statutory conditions of Rs.50 lakh threshold in post-2017 search cases, or no incriminating material linked to assessee, then the jurisdiction assumed under 153A of the Act, is defective. The property stated in the "satisfaction- note" is not in the name of the assessee, and no any property document or agreement is in the name of the assessee, under consideration, the property mentioned in the "satisfaction -note" is in the name



of third- party, and moreover, the above “satisfaction note” has not been approved by the higher authorities. We note that identification of the asset of Rs. 50 Lakhs or more, as per fourth proviso of section 153A(1) of the Act, should be done by the assessing officer, before issuing notice under section 153A of the Act/ before issuing satisfaction note under section 153A of the Act, which the assessing officer has failed to do so, as the property identified by the assessing officer has never been purchased by the assessee or by the assessee’s family members. No, any registered/unregistered agreement has been made in respect of that property, therefore to identify that property, as if, it is “asset” more than Rs.50 lakh, escaped assessment, is not acceptable, in the eye of law.

40. We note that the satisfactions recorded by the assessing officer before issuing notice u/s 153A for assessment years (AYs) 2012-13, 2013-14 and 2014-15, the assessing officer has relied upon the following documents and data, which as per the assessing officer reflects the assessee's unaccounted income represented by the asset within the meaning of Explanation- 2 to fourth proviso to section 153A of the Act:



SHAMJIBHAI SADHABHAI KANGAD			
AY	Seized Material Reference	Amount	Observation of AO
2011-12	Vijay Nagda Annx. A-12 Page No. 187	15,700	Unaccounted cash payment made for property situated at Survey No. 52, Tuna, Rampar.
2011-12	Vijay Nagda Annx. A-21 Page No. 87	8,000	Unaccounted cash payment made for property situated at Chopadva Survey No. 273
2011-12	Vijay Nagda Annx. A-18 Page No. 46	2,98,640	Unaccounted cash payment made for property situated at Khetar at Anjar
2012-13	Tally file	15,00,000	Unaccounted contribution of the appellant for the benefit of Neelkanth Group entities.
2012-13	Tally file	3,30,280	Unaccounted cash payment for purchase of gold coins.
2013-14	Vijay Nagda Annx. A-17 Page No. 218	55,00,000	Unaccounted cash payment made for purchase of property situated at Plot No. 22, Sector-2 by the appellant along with Babu Velji Humble having the appellant's share in the property at 50%.
2014-15	Vijay Nagda Annx. A-17 Page No. 218	1,66,57,250	

At the cost of repetition, we state that during the appellate proceedings, the assessee had furnished clarification on each of the above seized documents by stating that either the noting in the seized documents or data are not in the nature of "asset" as defined under Explanation -2 or such property has not been purchased by the assessee. The assessee submitted the revenue records of properties, as referred to by the assessing officer, which shows that the property had not purchased or held by the assessee or his family members but it is held third persons. The assessee argued that none of the seized documents and data relied upon by the assessing officer can be treated as tangible evidence which is a pre-requisite for invoking extended period of limitation under fourth proviso to section 153A of the Act. The assessee also relied on the speech of Hon'ble Finance Minister, while introducing Finance Bill, 2017 and memorandum to Finance Bill, 2017 which put much weightage on "tangible evidence" for



initiating assessment proceeding under fourth proviso to section 153A of the Act. Therefore, we find that the satisfaction note prepared by the Assessing Officer under the fourth proviso to section 153A(1) must record that, pursuant to the search, incriminating material/books/documents were found which reveal that the assessee has undisclosed income represented in the form of an “asset” of Rs.50 lakh or more (in case of searches conducted on or after 01.04.2017). The material must be relatable to the assessee and there must be a direct nexus with the assessee. We note that these conditions are not satisfied, hence the “satisfaction note” is defective, and not in accordance with the provisions of law.

41. To conclude, we note that the assessee has not purchased any property being Plot No. 55, Sector-2, which is mentioned in satisfaction note. During the assessment and appellate proceeding, the assessee submitted detailed submission showing that the property has been purchased and sold by third parties. Even the assessing officer has not made addition in respect of alleged unaccounted investment in property in the assessment order so framed by him. Therefore, the satisfaction note recorded by the assessing officer is itself invalid and bad in law and consequently, assessment orders framed by the assessing officer are liable to be quashed. Therefore, we note that required conditions, mentioned above, are not satisfied, hence the “satisfaction note” would be defective, and the assessment order framed under section 153A of the Act, for assessment years (AYs) 2012-13, 2013-14 and 2014-15 are quashed, as being without jurisdiction.

42. In the result, appeals filed by the assessee, for assessment years (AYs) 2012-13, 2013-14 and 2014-15 are allowed. The cross appeal filed by the revenue for assessment year 2014–15 becomes infructuous.



43. Since we have allowed the assessee's appeal for assessment years (AYs) 2012-13, 2013-14 and 2014-15, based on the first technical and legal issue of "satisfaction- note", therefore, we do not adjudicate the second technical/ legal issue, reproduced below:

*"The assessee has also raised additional grounds of appeal in two assessment years (AYs) 2013-14, and 2014-15, which reads as follows:*

*"On the facts and in the circumstances of the case, and in law, the Id. CIT(A), erred in rejecting ground of appeal related to issuance of notice u/s 153A of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] during the pendency of earlier assessment proceeding, initiated u/s 147 of the Act. Therefore, two parallel proceeding initiated by the assessing officer was procedurally invalid and illegal which vitiates the entire assessment."*

We note that above second technical/ legal issue raised by the assessee, pertains to assessment years (AYs) 2013-14, and 2014-15, and since we have already quashed the assessment orders for assessment years, (AYs) 2012-13, 2013-14 and 2014-15, therefore, second technical/ legal issue raised by the assessee, becomes academic and infructuous.

44. Now we shall take the concise and summarised ground no. 1 and 2, which are reproduced below, for ready reference.

*Ground No.1 - The Learned Commissioner of Income-tax (Appeals)-11, [CIT(A)], erred on facts as also in law in rejecting assessee's plea that no addition could have been made in the order passed u/s 153A of the Act, in absence of there being incriminating material found from the assessee. The order passed making addition without there being any incriminating materials may kindly be deleted.*

*Ground No.2 - The learned CIT(A) erred on facts as also in law in not appreciating the fact that the seized data/documents were found from the premises of third party, therefore addition on the basis of the said document cannot be made in the hands of the assessee u/s 153A of the Act. The assessing officer may kindly be directed to delete the addition on this ground.*

(This ground covers, IT(SS) No.15/RJT/2022 for A.Y. 2015-16, IT(SS) No.16/RJT/2022 for A.Y. 2016-17, IT(SS) No.17/RJT/2022 for A.Y. 2017-18, IT(SS) No.18/RJT/2022 for A.Y. 2018-19, IT(SS) No.19/RJT/2022 for A.Y.



2019-20, IT(SS) No.20/RJT/2022 for A.Y. 2020-21, and ITA No. 320/RJT/2022 for A.Y. 2021-22.)

45. These above two summarised and concise grounds of the assessee, are covered against the assessee by the order of the Tribunal in ITA No. 292/RJT/2022 and others, in the case of M/s Ahir Salt and Allied Products Ltd, vide order dated 29.11.2024, wherein, the Tribunal, held as follows:

*“12. Shri S.N.Soparkar, ( Senior Advocate), Learned Counsel for the assessee, argued before the Bench that no addition should be made without any incrementing material. Third-party evidence should not be relied, moreover opportunity of cross examination was not provided to the assessee and documents found in search were dump documents, hence addition made by the assessing officer should be deleted.*

*13. On the other hand, learned DR for the revenue, relied on the findings of the assessing officer. Learned DR for the revenue, also relied on the findings of the order of the Tribunal, in the assessee`s own case in IT(SS)A No. 6 and 7/RJT/2022, vide order dated 12.06.2024, and also stated that additions made by the assessing officer may be confirmed.*

*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 find merit in the submissions of Id DR for the revenue and noted that various issues raised by the assessee and revenue, were adjudicated by the Tribunal, in assessee`s own case in T(SS)A No. 6 and 7/RJT/2022, vide order dated 12.06.2024, the findings of the Tribunal, are reproduced below:*

*“52. We completely agree with the Ld.CIT(A) that the data was very revealing/speaking, apparently genuine and duly corroborated, and the addition in the impugned year was not based on any extrapolation of data.*

*53. Addressing first the contention of the Ld.Counsel with regard to the data being a mere entry uncorroborated with any other material IT(SS)A No.6 & 7/RJT/2022 evidence, it is pertinent to first take note of the fact which has not been disputed before us, that the data in the pendrive pertained to the assessee. The Ld.CIT(A) has rightly noted that the linkage of the pendrive and other material, found with the accountant and cashier of the group with the assessee, was established since the assessee was part/ connected to the group and these persons looked after financial affairs of the assessee. Also we have rejected assessee`s contention of having no connection with the adverse material since it was found at third party premises while dealing with ground no 2 & 3 of the assessee above at para-25 to 31 of our order.*

*54. Further the assessing officer has recorded detailed and pertinent facts establishing the genuineness of the data at para 11 of his order, where he found the persons, companies, firms and parties recorded in the tally file contained in the pendrive to exist, have business and personal relations with the Neelkanth group and the transactions recorded being independently verifiable with third party evidence. It is pertinent to reproduce his findings, which importantly have remained uncontroverted.*



"11. As far as the genuineness of this tally data is concerned, it is seen that the persons, companies, firms and parties recorded in the tally file do exist and have business or personal relations with Neelkanth group and, therefore, has live nexus with Neelkanth group. Names of such persons exist in phone books of Neelkanth group persons. The vehicle numbers mentioned in the narrations are owned by / related to assessee group, the events such as marriages and birthdays exist on recorded dates, the transactions are also identified to have actually taken place when compared with independently verifiable third-party evidences such as Revenue Records, RTO Records, Bank Statements, Insurance Company Records, Counterparties' Bills etc. The transactions are duly supported by corresponding vouchers. Also, evidences of signed approval of such transactions by Neelkanth group persons are found. The correlation between the transactions recorded in tally file with independently verifiable third-party evidences proves that the entries recorded in the seized tally data are true, correct and independently verifiable.

11.1 Without prejudice to the above factual confirmations regarding the authenticity of the seized tally data, the statement of Shri Mihir Kangad is also relevant to understand the reliability of the data. The transactions in "for IT(SS)A No.6 & 7/RJT/2022 CA Students from 01.04.2010 - 31.03.2017" were confronted to Sh. Mihir Kangad (key person of the Neelkanth Group). Sh. Mihir Kangad admitted that the transactions in the tally files are genuine and have been made on instruction of members of the Neelkanth Group. The relevant excerpts from the statements of Shri Mihir Kangad are as under .....

55. The assessing officer also found all data in the tally folder of the pendrive to be generated from vouchers and bills, scanned copies of which were found in a separate file in the pendrive and even physical copies were found at the premises of the cashier of the group when searched. In all 18,427 transactions were so found recorded. These facts have also remained uncontroverted. The inference therefore from the same derived by the Revenue authorities that the transactions recorded were genuine transactions is we hold correct.

56. It is this data, which is found to be genuine and relating to actual transactions, which reveals clearly share of undisclosed profits of the Neelkanth group from the assessee in the folder "FOR CA STUDENTS". And this entry is corroborated with ledger account revealing profits earned by the assessee and their allocation to different stakeholders contained in a tally file ASM. This is further IT(SS)A No.6 & 7/RJT/2022 corroborated with balance sheets found of the assessee for different years disclosing the said profits clearly.

57. For clarity, reference is made to data relating to F.Y 2012-13 found in the pendrive. The tally file FOR CA STUDENTS reveals share of Neelkanth group in undisclosed profits earned by assessee disclosed in the ledger PROFIT/ LOSS FROM AHIR SALT FOR F.Y 2012-13 to be Rs.11,15,07,378/- (para 6.2 A O's order).

File "ASM" discloses the same amount of profit of Rs.11,15,07,378/- allocated to Neelkanth group for the year @ 71/% out of the total undisclosed profits of the assessee for the year of Rs.15,70,52,643/- (para 7.1 A O's order).

The balance sheet of the assessee named ASM found during search, disclosing unaccounted assets and liabilities for the year ending 31-03-2013 also reveals same profit of Rs.15,70,52,643/- distributed/transferred during the year by the assessee

58. Thus the digital record is not just a mere uncorroborated entry, as contended by the Ld.Counsel for the assessee, but a speaking data revealing clearly profits earned by the assessee, duly corroborated with corresponding entry in the books of a stakeholder and also in the balance sheet of the assessee relating to the undisclosed business all found during search. It is, we hold, not a case of one instance of entry found but an entire trail of recording of the same entry in other records also pertaining both to the assessee and other parties.



59. We are in complete agreement, therefore, with the Ld.CIT(A) that the data cannot be said to be vague, and dismissed as such as not sufficient for drawing any inference there from. On the contrary a logical conclusion has to be derived there from.

60. As per [section 292C](#) of the Act, books of accounts, documents, assets etc. found during search [u/s 132](#) of the Act, are presumed to belong to the assessee and their contents presumed to be true. Section 292C is reproduced hereunder:

Presumption as to assets, books of account, etc. 292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under [section 132](#) or survey under section 133A, it may, in any proceeding under this Act, be presumed--

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under [section 132](#).

61. It is for the assessee to rebut the presumption with cogent evidence. Meaning thereby that the onus is on the assessee to show that the books/documents do not belong to it nor are their contents true. In the present case the presumption is that the digital record found during search belongs to the assessee and its contents revealing undisclosed profits earned by the assessee are true. The Ld.Counsel for the assessee pleading that the speaking digital data found during search needed to be corroborated with material evidence for concluding that they revealed undisclosed income earned by the assessee, is clearly contrary to law. The onus is on the assessee to explain the contents of the data found in its possession. It cannot be and is also not the case of the assessee that the data is a dumb IT(SS)A No.6 & 7/RJT/2022 document. In the absence of any explanation given by the assessee regarding the nature of the contents of the data, there is no question of shifting the onus on the Revenue to unearth further material evidence by way of any undisclosed assets etc. in which the profits were allegedly invested, to substantiate its case.

62. The contention of the Ld.Counsel for the assessee therefore that data found was a mere entry that too uncorroborated, is found by us to be incorrect, and his contention therefore for deleting the addition made of undisclosed profits in the hands of the assessee on basis this data, needs to be rejected.

63. The next contention of the Ld.Counsel for the assessee that since specific entry of profit relating to the impugned years was not found in the digital data, addition on the basis of extrapolation of data found of another related entity could not be done, also merits no consideration.

64. There is no doubt that the data reveals profits earned by the assessee for various years, though not the impugned year. The data also reveals its distribution between all stakeholders in a fixed



ratio/percentage for all years including the impugned year. Therefore the data when read in entirety reveals profits earned by the assessee distributed to its various stakeholders in a fixed ratio. This is corroborated with corresponding entry of profit received by one of the stakeholders in its books maintained in the digital record. This record is found for several years. Therefore the fact of assessee earning profits year to year and distributing it to its stakeholders is clearly revealed from the records/data found. For the impugned year therefore when the data revealed clearly the share of the stakeholder alone, accounted for in its alleged books, it leads to the logical IT(SS)A No.6 & 7/RJT/2022 conclusion, that the said profits have arisen from profits earned by the assessee. The record of the stakeholder, Neelkanth enterprises, clearly revealing recording of profits received from the assessee equivalent to its share of 71%, there was no anomaly in the Revenue authorities holding assessee to have made profits in the impugned year calculated on the basis of that apportioned /distributed to its stakeholder. It is not case of extrapolation of data of the stakeholder to arrive at the profits earned by the assessee, but on the contrary a case of deriving factum of profit earned by the assessee clearly revealed from the data of the stakeholder. Therefore the contention of the Ld.Counsel for the assessee of the addition made of undisclosed profits being based on extrapolation of data is found to be incorrect and his plea for deleting the addition therefore rejected.

65. The next contention of the Ld.counsel for the assessee before us was that without prejudice to his arguments made on the merits of the addition made, the assessee be allowed set off of losses. He pointed out that that in the data extracted from the pen-drive the assessee was noted to have earned loss in Asst. Year 2015-16 of Rs.9,61,09,539/- which has been held by the Ld.CIT(A) to be the assessed income / loss of the assessee for the said year.

66. His contention was that the set off of these losses be allowed to the assessee in the impugned immediately successive years, A.Y 2016-17 and A.Y 2017-18.

67. He contended that the Ld.CIT(A) had denied the set off of loss of A.Y 2015-16 amounting to Rs. 9,61,09,539/- since they were not returned, against which the assessee was aggrieved.

68. The Ld.counsel for the assessee contended that it is settled law that the issue of claim of set off of brought forward loss is to be examined in the year in which the set off is so claimed. This regard, IT(SS)A No.6 & 7/RJT/2022 we refer to the decision of Hon'ble Apex Court in the case of [CIT Vs. Manmohan Das \(Deceased\)](#), (1966) 59 ITR 699(SC). He also referred to the decision of the ITAT, Mumbai Bench 'G' in the case of [Gajendra Kumar T. Agarwal Vs. ITO](#), (2011) 11 taxmann.com 231 (Mum). Reliance was also made to the decision of the ITAT, Delhi Bench in the case of [Anant Raj Ltd. Vs. ACIT](#), ITA No.5169/Del/2017 and others order dated 11.5.2020. The Ld.counsel for the assessee further stated that the benefit of set off of losses had been denied by the Ld.CIT(A) for the reason that the assessee had not disclosed such loss in the return of income. He contended that the Hon'ble Gujarat High Court in the case of [Kirit Dahyabhai Patel Vs. ACIT](#), (2017) 80 taxmann.com 162 (Guj) has held that in view of the specific provision of [section 153A](#) of the Act return filed in response to the notice under [section 153A](#) of the Act, is to be considered as return of income filed under [section 139](#) of the Act. The Ld.counsel for the assessee has also relied on the decision of the ITAT, Delhi Bench in the case of [HBN Dairies & Allied Ltd. Vs. ACIT](#), (2018) 96 taxmann.com 353 (Del- Trib)(TM) for the proposition that the assessee's claim of brought forward losses in search assessment was to be allowed. Copies of all the orders were placed before us.

69. We have heard both the parties. The assessee's contention is that the assessed loss of immediately preceding year i.e. Asst.Year 2015-16 amounting to Rs.9,61,09,539/- be set off against the profits assessed for the impugned year amounting to Rs.12,69,69,992/- for Asst.Year 2016-17 and Rs.12,50,99,546/- for Asst.Year 2017-18. We are not agreeable with the same.



*It is an undisputed fact that the loss of the immediately preceding assessment year and the profits of the impugned assessment year were not returned to tax in the returns filed in IT(SS)A No.6 & 7/RJT/2022 response to the notice under [section 153A](#) of the Act. These losses/profits are assessed income of the assessee on the basis of incriminating material found during the search. The provision of law with regard to carry forward and set off of loss as contained in [section 139\(3\)](#) of the Act is that only loss which are returned within the time allowed as per [section 139\(1\)](#) of the Act are allowed to be carried forward and set off against the income of the succeeding years. There is no dispute with respect to the above provision of law. As far as reliance of the assessee to decisions laying down the proposition that the return filed in response to the notice under [section 153A](#) of the Act are to be treated as that filed under [section 139\(1\)](#) of the Act ([Kirit Dahyabhai Patel](#)(supra), there is no denial or dispute with regard to the same also. But [the said decision](#) is of no help to the assessee, because the assessee has not claimed the loss in the return filed in response to the notice under [section 153A](#) of the Act, as noted above before us.*

*Thus since the loss of the preceding year has not been returned to tax in the return filed in response to notice [u/s 153A](#) of the Act, the law does not allow benefit of set off of such losses against incomes of succeeding years.*

*Such a proposition as canvassed by the Ld.Counsel for the assessee would result in honest assessee being placed in a disadvantageous position as compared to those who otherwise do not disclose correct incomes but it is discovered during search proceedings. As per the provisions of law it is only losses disclosed in returns filed within prescribed time which are allowed the benefit of being carried forward and set off against incomes of succeeding years. An honest assessee who otherwise discloses losses but not within IT(SS)A No.6 & 7/RJT/2022 prescribed time is therefore denied the benefit of carry forward and set off of the losses.*

*If the proposition canvassed by the Ld.Counsel for the assessee is accepted then losses discovered during search, not otherwise disclosed in returns filed are to be allowed benefit of carry forward and set off. In short an unscrupulous assessee whose undisclosed economic activities are discovered during search will be in a beneficial position with regards to set off and carry forward of losses as opposed to an honest assessee . This surely cannot be the intention of law.*

*The decision of the ITAT Delhi Bench in the case of [HBN Dairies](#) (supra) does not help the case of the assessee since in the said case losses claimed to be set off against profits were disclosed in the return filed [u/s 153A](#) of the Act.*

*As for the other decisions relied upon by the Ld.counsel for the assessee, they only lay down the proposition that the claim of set off of losses is to be examined in the year in which the set off is claimed. How these decisions are of any assistance to the assessee's claim in the impugned year, we fail to understand, considering the fact that even as per the provision of law, the assessee is not eligible to claim the set off of losses since the losses were not returned in the return of income filed in response to the notice under [section 153A](#) of the Act. We, therefore, are in complete agreement with the Ld.CIT(A) that the assessee is not entitled to any set off of loss brought forward from the preceding years and these contentions of the Ld.counsel for the assessee is accordingly dismissed.*

*70. The last contention of the Ld.counsel for the assessee before us was that the profits disclosed by the assessee in its return should be reduced from the alleged profits disclosed in the ledger found in the IT(SS)A No.6 & 7/RJT/2022 PDF for determining the undisclosed profits of the assessee for the impugned years. His contention was that there is no basis with the department to hold that the entire profits, as disclosed in the ledger was undisclosed. Therefore, the benefit of profits already disclosed by the assessee should be given to it.*



71. Ld.DR on the other hand relied on the findings of the Ld.CIT(A) rejecting this contention of the assessee at para 39.8 (ii) and (iii)and(iv) as under:...

72. We have considered the argument of the Ld.Counsel for the assessee that profits already disclosed by the assessee be reduced from the profits assessed on the basis of alleged incriminating material found during search, and noting the findings of the Ld.CIT(A) IT(SS)A No.6 & 7/RJT/2022 while rejecting this plea of the assessee, which findings have remained uncontroverted before us, we find no merit in the plea of the assessee.

The Ld.CIT(A) has noted pertinent facts while rejecting this contention. He has noted that the assessee has not produced single evidence to show that the data found during search included transactions accounted for by the assessee in its Books of accounts. On the contrary the Ld.CIT(A) found that the data was found by the assessing officer to be a recording of only unaccounted transactions of the assessee reflected in vouchers and other documents found both physically with the assessee and scanned copies found in the digital data.

73. The Ld.CIT(A) also found that seized data revealing assets of the assessee were also found in the form of Balance sheets of the assessee pertaining to different years which reflected clearly the unaccounted profits earned by the assessee. He noted that the assets reflected therein were far less than that as per Books of accounts of the assessee.

The above facts have remained uncontroverted before us.

74. In view of the same, we completely agree with the Ld.CIT(A) that the incriminating material reflected only the unaccounted profits of the assessee. There is no question therefore of reducing the unaccounted profits added to the income of the assessee with the profits disclosed and returned to tax by the assessee.

This contention/ground raised by the assessee is also dismissed.

75. Ground No.4 & 5 and the additional grounds raised by the assessee are dismissed.

76. In effect, both the appeals are dismissed. As a consequence, the stay petitions filed by the assessee do not survive, and the same are also dismissed."

15. We agree with the above findings of the Tribunal, in assessee`s own case-supra, (except the findings in relation to carry forward and set off of losses,). Therefore, various grounds raised by the revenue, in these five years, are allowed to the extent indicated in assessee`s own case in IT(SS)A No. 6 and 7/RJT/2022, vide order dated 12.06.2024, whereas, appeals of the assessee for these five years are dismissed."

46. Therefore, respectfully following the decision of the Coordinate Bench of ITAT Rajkot in the assessee`s own group case(supra), we dismiss, summarised and concise ground no. 1 and 2 raised by the assessee.



47. Now coming to the merits of the case, for remaining seven assessment years, viz: 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, wherein, the assessee and revenue raised the following summarised and concise grounds of appeal, on merits, which are reproduced below for ready reference:

*“Ground No.3 - The Id. CIT(A) erred on facts as also in law in confirming the addition made of Rs. 3,20,19,238/- by estimating profit at the arbitrary rate of 20% on the alleged unaccounted receipt of Rs.16,00,96,192/-on the basis of dumb data/documents stated to have been recovered from the premises of third party. The addition retained is totally unjustified and uncalled for and the same may kindly be deleted”.*

*(This ground covers, IT(SS) No.15/RJT/2022 for A.Y. 2015-16, IT(SS) No.16/RJT/2022 for A.Y. 2016-17, IT(SS) No.17/RJT/2022 for A.Y. 2017-18, IT(SS) No.18/RJT/2022 for A.Y. 2018-19, IT(SS) No.19/RJT/2022 for A.Y. 2019-20, IT(SS) No.20/RJT/2022 for A.Y. 2020-21, and ITA No. 320/RJT/2022 for A.Y. 2021-22.)*

*Ground No.4 -Assessee`s appeal - The Id. CIT(A) erred on facts as also in law in not deleting on merit addition made of Rs. 3,40,40,206/-, as alleged unexplained money u/s. 69A of the Act on the alleged ground of unaccounted cash generated by the assessee. The addition retained is totally unjustified and uncalled for and may kindly be directed to delete the addition made.*

*Ground No. 4- Revenue's cross grounds on the same issue in appeal:*

*(a) On the facts and in the circumstances and in law, the Id. CIT(A), failed to appreciate the facts on the case and wrongly allowed unexplained money to be set off from current year profit.*

*(b) On the facts and in the circumstances and in law, the Id. CIT(A), fails to appreciate the facts of the case, that the credit of debit balances of loan accounts was not allowable considering that no details whatsoever with respect to the balances have been provided by the assessee during the assessment proceedings.*

*(c) On the facts and in the circumstances and in law, the Id. CIT(A) has erred in granting relief of Rs. 3,40,40,206/- stating that the debit balances of the loan proceeds should have been allowed to set off against the addition made for the credit balances of loan proceeds for all the year involved, and for remaining balances also the source to the extent of amount of corresponding unaccounted business receipts for the respective years has been treated as explained and the balance amounts, if any, only shall be allowed to be treated as unexplained income u/s.69A of the Act.*

*(The above ground covers, in assessee`s appeal in ITA No. 320/RJT/2022 for A.Y. 2021-22.) (The above ground also covers, in Revenue`s appeal in ITA No.321/RJT/2022 for A.Y. 2021-22)*

*Ground No.6- In Revenue`s appeals:*

*(a) On facts and on the circumstances of the case and in law, the learned Commissioner (Appeals) erred in ignoring that there were parallel books of accounts maintained by the*



*assessee in tally software, which was found and impounded during the course of search, on which the assessing officer has relied upon.*

*(b) Ld. CIT(A), failed to appreciate the facts of the case and in law, that one of the key person of the group concerns Shri Mihir Kangad in his statement recorded u/s.132(4) and has agreed unaccounted transaction have become happened and admitted that the transactions in the tally files, though complex but made on the instructions of members of Neelkanth group and correlation between the transaction recorded in tally file with independently verifiable third-party evidences proves that the entries recorded in the evidences seized are, true, correct and independently verifiable.*

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

*(The above grounds of appeals cover, in Revenue's appeal in IT(ss) A No. 21/RJT/2022 for AY 2014-15, IT(ss) No. 22/RJT/2022 for AY 2016-17, IT(ss) No. 23/RJT/2022 for AY 2017-18 and ITA No. 321/RJT/2022 for AY 2021-22)"*

48. We note that for remaining seven assessment years, viz: 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, the above grounds of appeal raised by the assessee and revenue, are on merit. These grounds raised by the assessee and revenue relate to 20% addition made by the assessing officer on account of unaccounted receipts and addition made by the assessing officer on account of unsecured loan. The issue of 20% addition made by the assessing officer, on account of unaccounted receipts and addition made by the assessing officer on account of unsecured loan are interconnected and mix, because the Ld.CIT(A) has given the telescoping benefit against the trading addition sustained @ 20% of gross receipt, therefore, we shall adjudicate these two issues together. In the above summarised grounds, the summarised ground no.6 raised by the revenue, only pertains to arguments on merits, by the revenue.

49. We note that in case of above remaining seven assessment years, viz: 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, wherein the assessing officer made addition at the rate of 20% on account of unaccounted



receipts and unsecured loan. On appeal by the assessee, before learned CIT(A), the assessee argued, during the appellate proceedings that there should not be both additions in the hands of the assessee, viz: one addition on account of bogus cash credit and another addition on account of suppression of profit. If these two additions came from the same documents, then telescoping benefit should be provided to the assessee, therefore the learned CIT(A) has provided the telescoping benefit to the assessee and partly allowed the appeal of the assessee, observing as follows:

*“17.3 Another plea of the assessee is that while making addition on account of net unexplained credit as above, the assessing officer only considered accounts having final credit balances, leaving behind the transactions of same nature having debit balances. Therefore, according to the assessee, the assessing officer had to consider the accounts having debit balances too while considering the accounts with credit balances and net balance / result could be treated as amount of addition u/s 69A of the Act. Thus, figures and balances reflected under the grouping of advances should be adjusted from the balance under the grouping of unsecured loans and net balance of loan after adjustment of advances should be considered, which comes to Rs. 16,69,53,125/- (for A.Y.2011- 12 to 2017-18). In this regard I have perused the submission and also gone through the finding in the assessment order so far as addition made u/s 69A of the Act is concerned. Here one thing is clear that both credit and debit balance accounts are unaccounted and not reflected in the regular books of account. Further, the assessee has measurably failed to give any details of these credit/debit balance accounts, therefore, the assessing officer has treated the same as unexplained credits. However, when the assessee himself is admitting the fact that such types of accounts are dummy and represents his own unaccounted fund movement, as categorically stated in reply to question No. 57 of statement recorded u/s. 132(4) of the Act, then reasonable course of action would be to treat the net balance of the intermingled unaccounted funds after allowing set off of accounts having debit balances. Thus, the assessee's plea is acceptable that when funds credits is part of his income, then, funds debited under different heads would also be treated as funds available for further introduction/ infusion being his own unaccounted funds in absence of any other particular utilisation. Not only that, according to the peak theory when credit and debit balance accounts are treated as assessee's own transactions then benefit of netting of is plausible in intermingled transactions. Therefore, assessee's plea of set off of debit balance account is accepted and net balance of loan is treated for making addition u/s.69A of the Act in different years. The summary of net amount of addition sustained u/s.69A of the Act is as under:*

A.Y.	Amount under the head Unsecured Loan	Amount under the head Advances	Net Credit Balance
2011-12	51,85,014	10,22,000	41,63,014
2012-13	1,89,48,003	8,61,849	1,80,86,154
2013-14	1,41,79,840	1,27,67,073	14,12,767
2014-15	2,77,93,271	1,02,97,242	1,74,96,029
2015-16	1,09,03,411	1,33,26,096	(-) 24,22,685
2016-17	6,80,31,027	1,87,76,105	4,92,54,922
2017-18	9,17,48,459	1,27,85,535	7,89,62,924
<b>Total</b>	<b>23,67,89,025</b>	<b>6,98,35,900</b>	<b>16,69,53,125</b>



17.4 Fourthly, it is submitted that while working out the real taxable income, the assessing officer has not given set off of trading addition against the so-called unexplained credits added u/s 69A of the Act. Not giving the telescoping benefit amounts to double addition. Thus, the assessee requested for telescoping benefit against the trading addition sustained @ 20% of gross receipt. And lastly, little refined version of earlier plea is that the assessing officer has not allowed set off of closing balance of funds available in the preceding years towards the current years unexplained credits. When the assessee is taking this plea, it indirectly means that the assessee is acceding to the fact that he had indeed earned profits, as estimated by the assessing officer (supra). This again vindicates the stand of the assessing officer as well of the undersigned, on the issue of unaccounted profits earned by the assessee. Here, assessee buttress his argument with the assessment orders passed by the assessing officer in case of group person Shri Laxman Teja Ahir u/s 153A of the Act, dated 31.03.2022 for A. Ys 2013-14 to 2021-22 wherein the assessing officer himself allowed the benefit of earlier years' surplus funds as set off against alleged unexplained assets/investment in subsequent year.

17.4.1 The above plea taken by the assessee is that, even if the above addition of cash introduced into business and on which addition u/s. 69A has been made by the assessing officer is held to be true, then the assessing officer ought to have appreciated the fact that, the surplus of profits arising during the year and from earlier years should also be considered and due credits of such cash surplus should be given. The plea of the assessee that the cash surplus out of the profits earned should be set off against the addition of unaccounted monies is therefore considered acceptable because, since the estimated profits have been sustained, and if no set off of the surplus cash is given then this would be tantamount to double addition to the extent of surplus profits. Hon. High Court of Punjab and Haryana has in the case of CIT, Jalandhar-ll vs. Aggarwal Engg. Co. (Jal.) 156 TAXMAN 40 has held that once net profit rate was applied on contract receipts of assessee for estimating income from contract work, no further addition was called for in respect of purchases and introduction of cash. Similarly, Hon. High Court of Madras has in the case of CIT vs. K.S.M. Guruswamy Nadar & Sons [1984] 19 Taxman 533 (Mad.) has held that, **in addition to the bogus cash credits, there was an addition towards the suppression of profit also. In such a case when there were two additions, it is open to the assessee to prove that the cash credits came from the suppressed profits towards which an addition has already been made, and, therefore, there should be telescoping of one with the other and that there should be only one addition. It was thus clear in the instant case that the view taken by the Tribunal that the additions towards the suppressed book profit should have been telescoped with the additions towards the cash credits, was legally tenable.** Respectfully following these decisions, to avoid this duplication, the benefit of cash profit worked out for the years and unabsorbed profit of the earlier is given to the assessee against the addition made u/s 69A of the Act. However, this is restricted to the extent of such surplus available profits only. **Further, the excess of profit for AY 2011-12 is also not given set off, as the same does not fall under consideration period of 10 years. Accordingly, the addition made u/s. 69A is reworked out as under: -**



A.Y.	Unaccounted Profit estimated as per assessment order	Unexplained Money (Net) as per para 17.3	Unexplained Money set-off from current year profit	Unexplained Money set-off from accumulated surplus profit from earlier years	Addition of unexplained money in excess of estimated unaccounted profit and accumulated surplus	Surplus unaccounted profit after setting-off unexplained money	Accumulated Surplus	(Estimated Profit + unexplained money)
1	2	3	4	5	6 = 3-4-5	7 = 2-3	8	9 = 2 + 6
2012-13	1,25,48,103	1,80,86,154	1,25,48,103	-	55,38,051	-	-	1,80,86,154
2013-14	1,91,62,201	14,12,767	14,12,767	-	-	1,77,49,434	1,77,49,434	1,91,62,201
2014-15	3,22,89,423	1,74,96,029	1,74,96,029	-	-	1,47,93,394	3,25,42,828	3,22,89,423
2015-16	3,20,19,239	(-)24,22,685	-	-	-	2,95,96,554	6,21,39,382	3,20,19,239
2016-17	3,43,09,755	4,92,54,922	3,43,09,755	1,49,45,167	-	-	4,71,94,215	3,43,09,755
2017-18	1,54,27,965	7,89,62,924	1,54,27,965	4,71,94,215	1,63,40,744	-	-	3,17,68,709
2018-19	13,62,503	-	-	-	-	-	-	13,62,503
2019-20	6,03,952	-	-	-	-	-	-	6,03,952
2020-21	9,78,33,535	-	-	-	-	-	-	9,78,33,535
2021-22	1,54,40,514	-	-	-	-	-	-	1,54,40,514
<b>Total</b>	<b>26,09,97,190</b>	<b>16,27,90,111</b>	<b>8,11,94,619</b>	<b>6,21,39,382</b>	<b>2,18,78,795</b>	<b>-</b>	<b>-</b>	<b>28,28,75,985</b>

17.5 In nutshell, the addition to the above extent of Rs.2,18,78,795/- (Col. No. 6 of above table) u/s. 69A r.w.s 115BBE i.e., unaccounted money introduced into the business of the assessee is sustained. Based upon such observation, the unaccounted income of the assessee is determined as considering above facts, the assessing officer is directed to tax undisclosed income as per tabular chart herein above on year-to-year basis and the assessee gets consequential relief accordingly.

A.Y.	Addition made in the assessment order (aggregate of estimated profit Plus unaccounted monies)	Addition confirmed (entire estimated profit @ 20% as per the assessment order plus unaccounted monies after deducting the surplus cash of earlier years' profit already included in the addition of estimated profits)	Relief granted
2012-13	3,14,96,106	1,80,86,154	1,34,09,952
2013-14	3,33,42,042	1,91,62,201	1,41,79,841
2014-15	6,00,82,694	3,22,89,423	2,77,93,271
2015-16	4,29,22,649	3,20,19,239	1,09,03,410
2016-17	10,23,40,782	3,43,09,755	6,80,31,027
2017-18	10,71,76,424	3,17,68,709	7,54,07,715
2018-19	13,62,503	13,62,503	-

2019-20	6,03,952	6,03,952	-
2020-21	9,78,33,535	9,78,33,535	-
2021-22	1,54,40,514	1,54,40,514	-
	<b>49,26,02,201</b>	<b>28,28,75,985</b>	<b>20,97,25,216</b>

Considering above facts, the assessing officer is directed to tax undisclosed income as per tabular chart herein above on year-to-year basis and the assessee gets consequential relief accordingly.”



50. Aggrieved, by the above order of the learned CIT (A), the assessee as well as revenue, both are in appeal before us.

51. On merit, Id. Counsel for the assessee submitted that assessing officer made 20% addition and Ld. CIT(A) has confirmed the same. The estimation of profit is on higher side. Even rearranged data prepared by the assessing officer shows profit @ 5.56% profit against this assessing officer's estimation at 20% is very much on higher side even after taking care of procedural lapses. Therefore, Id. Counsel argued that net profit in the range of 6% to 8% may kindly be estimated. The Id. Counsel further submitted that in the statement recorded from Mihir Kangad, he has specifically stated that **entries in seized data are not correct especially transactions in the grouping of "loan" are not loan received, but trading receipts/ payments are recorded as loan receipts & advances by the accountant in dummy names. Therefore, there should not be any separate addition u/s. 69A on account of loan receipts, but the same should be treated as business / trading receipts, on which profit in the rage of 6-8% may be estimated.** Without prejudice to above, the Id. Counsel submitted that if a portion of the estimated business profit is treated as a part of the loans through telescoping, it strongly suggests that the nature of these 'loans' is inextricably linked to the unaccounted business activity. Therefore, any remaining unexplained portion of these 'loans' should also be treated as part of the business income. The assessee's submission, specifically citing Mihir Kangad's statement, suggests that what appeared as "unsecured loans" in the seized data were, in substance, "introduction of income generated from unaccounted trading activities". If this is the case, then, the entire amount of such funds, irrespective of their nomenclature in the seized data, represents unaccounted business receipts/income. The provisions of section 69A deals with "unexplained money"



where the source is not explained. If the source is identifiable (even if estimated) as being from unaccounted business operations, then it logically should be taxed as business income rather than unexplained money. The allowance of telescoping already establishes a link between the estimated business profits and the alleged unexplained loans, accepting that the profits could have been routed as loans. If the initial addition of "unaccounted gross receipts" and estimated profit (as business income) captures the profit element from the entire unaccounted business operations, then treating the remaining 'loans' separately under Section 69A might lead to an inconsistent application of tax principles, especially if these 'loans' are merely a reflection of cash generated from the same undisclosed business activities. The attention was invited to the fact that the CIT(A) did allow a set-off of surplus profits against Section 69A additions to avoid double taxation on that specific portion, his finding did not explicitly reclassify the remaining excess loan balance as business income. Instead, CIT(A) confirmed the addition u/s 69A for the remaining amount, emphasizing the assessee's failure to explain the source of these cash loans. This finding is contrary to the assertion made by Shri Mihir Kangad. The Id. CIT(A) has partly relied upon his statement and partly rejected which is totally unjustified in as much as when the 'loans' represent undisclosed business income, as evidenced by statements within the seized material (Mihir Kangad's statement) and the established principle from judicial pronouncements of allowing estimated business income to explain other unexplained funds to avoid double taxation or mischaracterization of the nature of income, the balance amount of loan is nothing but business income only.

52. Therefore, Id.Counsel stated that total net amount of loan found credited in the seized data is to be treated as net income earned from business activities (it cannot be treated unexplained income u/s. 69A) and accordingly, year-wise income may be worked out after considering the accumulated surplus available. Firstly, year-wise net business income is to be estimated by applying profit rate



of 6-8% on gross business receipts as per re-casted data. Then after, if the net loan amount of any year exceeds the profit estimated as well as accumulated surplus of earlier years, then such excess balance under the loan grouping should be treated as business income and the same may be taxed as per the normal rate of tax.

53. Apart from this, Id. Counsel stated that the documents found from the Shri Vijay Nagda and Mihir Kangad, etc, should be read as a whole. However the Assessing Officer taken the beneficial figure and ignored the other figures in the seized documents. Moreover, the assessing officer, himself had worked out net profit based on the seized material at the rate of 5.56%, which should be adopted to estimate the profit.

54. On the other hand, the Id. CIT-DR for the revenue submitted that the Assessing Officer as well as Ld. CIT(A) have examined these facts, narrated by the learned Counsel for the assessee (supra) and the additions were sustained as per the provisions of the law. The Id.DR pointed out that the Id. CIT(A), failed to appreciate the facts on the case and wrongly allowed unexplained money to be set off from current year profit and Id.CIT(A) also failed to appreciate the facts of the case, that the credit of debit balances of loan accounts was not allowable considering that no details whatsoever with respect to the balances have been provided by the assessee during the assessment proceedings. Besides, Id.CIT(A) wrongly allowed to set off against the addition made for the credit balances of loan proceeds for all the year involved, and for remaining balances also the source to the extent of amount of corresponding unaccounted business receipts for the respective years has been treated as explained, which is on wrong footing.

55. The Id. CIT-DR for the revenue further submitted that learned Commissioner (Appeals) ignored the fact that there were parallel books of accounts maintained



by the assessee in tally software, which was found and impounded during the course of search, on which the assessing officer has relied upon. The one of the key person of the group concerns Shri Mihir Kangad in his statement recorded u/s.132(4) of the Act and has agreed unaccounted transaction have become happened and admitted that the transactions in the tally files, though complex but made on the instructions of members of Neelkanth group and correlation between the transaction recorded in tally file with independently verifiable third-party evidences proves that the entries recorded in the evidences seized were true. The assessing officer has duly investigated and applied his mind on the report of the DDIT, Investigation wing and after satisfying himself made the assessment on the basis of cogent material and relevant evidence on record, therefore, on merit, addition made by the assessing officer should be sustained.

56. 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 find merit in the submission of learned Counsel for the assessee to the effect that addition made by estimating profit is at the arbitrary rate of 20% is totally unjustified. We note that estimation of profit is on higher side, even rearranged data prepared by the assessing officer shows profit @ 5.56% ( vide Para 12.2 of assessment order and From AY 2017-18 to 2021-22-Para 12.2 and Para 19 of assessment order).We note that assessing officer, taking reference from the theory of taxing 'Real Income' of the assessee, the profit of the assessee for various years based on the unaccounted transactions revealed from the data seized during the search was determined as under –

F.Y.	Receipts	20%profit
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2010-11	2,85,95,931	57,19,186
2011-12	6,27,40,513	1,25,48,103
2012-13	9,58,11,005	1,91,62,201
2013-14	16,14,47,115	3,82,89,423
2014-15	16,00,96,192	3,20,19,238
2015-16	17,15,48,774	3,43,09,755
2016-17	7,71,39,824	1,54,27,965
2017-18	68,12,514	13,62,503
2018-19	30,19,760	6,03,952
2019-20	48,91,67,675	9,78,33,535
2020-21	7,72,02,570	1,54,40,514
Total	1,33,35,81,873	26,67,16,375

The assessing officer himself stated that it is necessary to mention here that the profit percentage after the rearrangement of the entries in the seized data on basis of accounting principles is 5.56%. However, keeping in view of the discussion made above the profit is being estimated at 20%. We find that though the assessing officer worked out profit from seized data at 5.56%, however the assessing officer estimated at the same at the rate of 20% while making addition, which is, 4 times the profit worked out by himself. Therefore, the estimation is very much higher side, even after taking care of procedural lapses, particularly, in the salt manufacturing and trading activities. In such kind of business, various judicial forums have accepted that profit on higher side even after taking care of procedural lapses, particularly in the salt manufacturing and trading activities.

57. We note that in the statement recorded from Mihir Kangad, he has specifically stated that entries in seized data are not correct especially transactions in the



grouping of "loan" are not loan received, but trading receipts/payments are recorded as loan receipts & advances by the accountant in dummy names. Therefore, there should not be any separate addition u/s. 69A on account of loan receipts, but the same should be treated as business/trading receipts, on which profit in the range of 6 to 10% may be estimated. The assessee also submitted that if a portion of the estimated business profit is treated as a part of the loans through telescoping, it strongly suggests that the nature of these 'loans' is inextricably linked to the unaccounted business activity. Therefore, any remaining unexplained portion of these 'loans' should also be treated as part of the business income. We find that assessee's submission, specifically citing Mihir Kangad's statement, suggests that what appeared as "unsecured loans" in the seized data were, in substance, "introduction of income generated from unaccounted trading activities". If this is the case, then the entire amount of such funds, irrespective of their nomenclature in the seized data, represents unaccounted business receipts income. Section 69A of the Act, deals with "unexplained money" where the source is not explained. If the source is identifiable, as being from unaccounted business operations, then it logically should be taxed as business income rather than unexplained money.

58. We note that the allowance of telescoping already establishes a link between the estimated business profits and the alleged unexplained loans, accepting that the **profits could have been routed as loans**. If the initial addition of "unaccounted gross receipts" and estimated profit (as business income) captures the profit element from the entire unaccounted business operations, then treating the remaining "loans' separately under Section 69A might lead to an inconsistent application of tax principles, especially if these loans' are merely a reflection of cash generated from the same undisclosed business activities. We note that the



Id.CIT(A) had allowed a set-off of **surplus profits** against Section 69A additions to avoid double taxation on that specific portion, his finding **did not explicitly reclassify the remaining excess loan balance as business income**. Instead, CIT(A) confirmed the addition u/s 69A for the remaining amount, emphasizing the assessee's failure to explain the source of these cash loans. This finding is contrary to the assertion made by Shri Mihir Kangad. The Id. CIT(A) has partly relied upon his statement and partly rejected which is totally unjustified in as much as when the loans' represent undisclosed business income, as evidenced by statements within the seized material (Mihir Kangad's statement) and the established principle from judicial pronouncements of allowing estimated business income to explain other unexplained funds to avoid double taxation or mischaracterization of the nature of income, the balance amount of loan is nothing by business income only. To support the above contention, the relevant statement is reproduced below:



7.1.4. Further, it is also necessary to refer to the answer given to Q.57 during the statement u/s 132(4) of the Act by Shri Mihir T Kangad -

Statement on oath of Shri Mihir Tejabhai Kangad s/o Shri Tejabhai S Kangad recorded on oath u/s. 132(4) of the Income-tax Act, 1961 at Neelkant Enterprise at Neelkant Weighbridge, Kandla Port Road, Gandhidham on 24/12/2020

प्रश्न:57 श्री नारायण बी महेश्वरी के घर पर सर्च कार्रवाई के दौरान digital data में एक 'FOR CA Student' नाम की Tally फाइल मिली है इसमें 01.04.2010 से लेकर 31.03.2017 तक की लेन देन है इसकी डिजिटल कॉपी तथा tally data आपको दिया गया है। उक्त टैली फाइल के अंदर की transactions में से कुछ transactions sample basis ऊपर के प्रश्न में आपको दिखाया गया है। साथ ही अन्य प्रकार की भी cash transactions हैं जिन्हें देखकर कृपया टिप्पणी कीजिये। कृपया cash receipts के स्त्रोत बताइये। कृपया बताइये कि cash payments को किस प्रकार बुक्स में दर्शाया गया है ? कृपया टिप्पणी कीजिये।

उत्तर: महोदय मैंने उपरोक्त ट्रांसक्वन्स देख ली है। यह transactions 'FOR CA Student' नाम की Tally फाइल के तहत दर्ज है। इस सम्बन्ध में मैं यह निवेदन करना चाहता हूँ कि हमने यह tally files देखी है। ये सही है कि उपरोक्त ट्रांसक्वन्स के अंदर लिखे हुए व्यक्ति, concerns, स्थान आदि का आपके ग्रुप के साथ सम्बन्ध है। जिस tally सॉफ्टवेयर में दर्ज किये हुए ट्रांसक्वन्स की बात आप कर रहे है, वो हजारों एंट्रीज है और उसका प्रिंट करे तो वो भी हजारों कागज़ में आएगी। तो ये सारे transactions का विस्तार से जवाब अभी अल्प अवधि में मुमकिन नहीं है। मैं ये भी बताना चाहूंगा की ये सभी ट्रांसक्वन्स और एंट्रीज हमारे ग्रुप अकाउंटेंट व केशियर ने उसके दिमाग से और उसको हमारे विविध फॅमिली मेंबर्स और मैनेजमेंट पर्सन्स से मिली हुयी सुचना के आधार पर तथा उसके पास आयी हुई सिमित जानकारी के आधार से की हुई लगती है। tally सॉफ्टवेयर लिखी हुई ये सभी ट्रांसक्वन्स काफी जटिल भी है। परन्तु मैं ये बताना चाहूंगा tally सॉफ्टवेयर में लिखे हुए ये सभी बिज़नेस ट्रांसक्वन्स है जो ज्यादातर cash receipts और cash payments के अंतर्गत है और ये सभी cash receipts और cash payments हमारे विविध ग्रुप कम्पनीज, कंसर्न्स के ट्रेडिंग बिज़नेस से जुड़ा हुआ है, जैसे की बेहिसाब बिक्री, खरीदी, ट्रांसपोर्ट खर्च, मजदूरी या तो फाइनेशियल हेल्प के रूप में लिए हुए पैसे के रिलेटेड है। इन सभी ट्रांसक्वन्स को हमारे इंटरनल वेरिफिकेशन के बाद और सभी फॅमिली मेंबर जो अलग अलग डिपार्टमेंट सँभालते है, उन सबसे चर्चा करके और जो

W-1

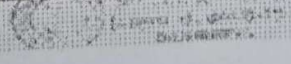
W-2

(विनय कौशल)

उप आयकर निदेशक (अन्वेषण),  
इकाई 1(3), अहमदाबाद

मिहिर तेजाभाई कांगड

24/12/2020





Statement on oath of Shri Mihir Tejabhai Kangad S/o Shri Tejabhai S Kangad recorded on oath u/s. 132(4) of the Income-tax Act, 1961 at Neelkant Enterprise at Neelkanth Weighbridge, Kandla Port Road, Gandhidham on 24/12/2020

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overlapping और duplicate transactions है उसको निकालके, जो भी सही मायने में undisclosed income उभर के आएगी, वो हम डिपार्टमेंट के सामने टेक्स भरने के लिए घोषित कर देंगे। उपरोक्त प्रश्न में जो headings दी गयी है, वो आपके observations हैं। दरअसल बहुत सारी ट्रांसक्वन्स ऐसी होंगी जो दी गयी हेडिंग्स से भिन्न होंगी। महोदय, जहाँ तक मेरी समझ है तब तक इन सभी व्यवहारों केवल नकद लोन नहीं है परन्तु नकद आवक है जो हमारे बेहिसाबी ट्रेडिंग बिज़नेस से earn की हुई रकम है और ये रकम dummy नाम से लोन के स्वरूप में दिखाई है। हालांकि, इनमे से कुछ व्यवहार अस्थायी समय के लिए हुए लोन भी हो सकते हैं, उसकी पूरी डिटेल्स में इकठ्ठा करके जमा करवा दूंगा। अपने दिखाए हुए सारे नाम सही नाम नहीं है किन्तु ये सभी प्रतिनिधि है और ये नाम हमारे अकाउंटेंट ने उसकी सिमित जानकारी से हिसाब से लिखे हुए है। इसलिए इन सभी हिसाबी व्यवहारों के सही नेचर के बारे में सभी फॅमिली मेंबर्स से चर्चा करने के बाद जो भी ट्रिटियां निकालके आएगी उसका समावेश अधोषित आय के वर्किंग में किया जायेगा। तदुपरांत, मुझे ये भी लगता है की tally सॉफ्टवेयर में नकद में जो रकम जमा की हुई है वो बैंक और फाइनेंस कम्पनीज से लिए हुए ऋण जो की बुक्स ऑफ़ अकाउंट में expense inflate करके नकद में मिली हुई राशि का भी समावेश है। अतः महोदय आपसे निवेदन है कि इसके लिए हमें थोड़ा बक्त (10 to 15 days) दिया जाये ताकि हम इन transactions का analysis करके explanation प्रस्तुत कर सकें।

Statement on oath of Shri Mihir Tejabhai Kangad S/o Shri Tejabhai S Kangad recorded on oath u/s. 132(4) of the Income-tax Act, 1961 at Neelkant Enterprise at Neelkanth Weighbridge, Kandla Port Road, Gandhidham on 24/12/2020

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विश्लेषण करके आपके समक्ष प्रस्तुत करेंगे। मैं यह पुनः निवेदन करना चाहूंगा कि जिस भी stage पर undisclosed income सामने आएगी। हम उस पर जो भी टेक्स भरना बनेगा, भर देंगे।

प्रश्न:65 क्या आप और कुछ कहना चाहते हैं ?

उत्तर: महोदय, मैं ये बताना चाहूंगा की हम कई सारे बिज़नेस verticals और सेगमेंट में काम करते है और ये सारे बिज़नेस पुरे लेबर आधारित है। खास तौर पर, नमक उत्पादन तथा ट्रेडिंग का बिज़नेस पुरे परंपरागत और पुराने तौर तरीकी से चलता है और इसीलिए हमें मजबूरन कई सारे बिज़नेस के अंतर्गत खर्चें नकद में भुगतान करने पड़ते है, जो की अभी के वातावरण में मुश्किल है। इसलिए इस नकद के खर्चें को फण्ड करने के लिए तथा बिज़नेस सुविधा के लिए हम unaccounted trading करते है और कई बार किसी अन्य व्यक्ति को बैंक से भुगतान करके, उसके पास से नकद वापस लेके, वो नकद का सही व्यक्ति को भुगतान कर देते है। इन सभी व्यवहारों के ठीक तरह से वेरीफाई करने के बाद, हम सही अधोषित आय निकाल के यथोचित फोरम के सामने उसका टेक्स ऑफर कर देंगे। मैं फिर से दोहराना चाहूंगा की हमारे विविध business units को चलाने वाले विविध फॅमिली मेंबर्स तथा हमारा संयुक्त बड़ा परिवार होने के कारण तथा हमारे यहाँ से मिले हुए बिज़नेस ट्रांसक्वन्स काफी जटिल और विस्तीर्ण होने के कारण, इसका सही जवाब देने में समय लग सकता है। आपको नम्र प्रार्थना है की आप हमें इन सभी काम करने के लिए उचित समय दे। अतः हम पूरी proper calculation करने के बाद सेटलमेंट कमीशन में जाने का विचार कर रहे हैं, कृपया हमें थोड़ा समय प्रदान करें।

उपरोक्त अंश में अपने पुरे हीरा-डायमंड के; 2-अस्य माजस्त्रिक इन-स्था में बिना किसी अन्न या अन्य के (इथा 5 तथा 25 ईई उपर वापस कर) हीरा

Signature  
24/12/2020  
Signature  
24/12/2020



59. Therefore, considering the above actual position, we find that profit estimation on unaccounted receipts at the rate of 20% is very higher side, especially in the salt business, wherein we find that assessing officer has himself worked out net profit at the rate of 5.56% based on the seized material. We note that there must be honest and fair estimate of the proper figure of assessment, for which consideration of local knowledge and repute, besides the previous returns an assessment of the assessee concerned, and all other matters must be taken into account for fair and proper estimate which of course, would fall in the category of guesswork, but a honest guesswork. Based on the factual position narrated above, we are of the view that estimation made by assessing officer is not based on sound reasoning in comparison with the past results as well as comparable cases, as well as based on the seized material. As we have noted earlier, that assessing officer has himself worked out net profit at the rate of 5.56%, hence, based on the above factual position narrated above we are of the view that 10% profit estimation is proper and fair on unaccounted receipts. Therefore, we reduce the profit estimation from 20% to 10% and we direct the assessing officer to sustain the addition in the hands of the assessee at the rate of 10% of unaccounted receipts.

60. Now coming to the telescoping benefit of the remaining unsecured loan. We find that if a portion of the estimated business profit is treated as a part of the loans through telescoping, by Id.CIT(A) himself, on pick and choose basis, which is not acceptable because a document found in the search and seizure proceedings should be read as a whole. The document found by the search team, during the search and seizure proceedings strongly suggests that the nature of these 'loans' is inextricably linked to the unaccounted business activity. Therefore, any remaining unexplained portion of these 'loans' should also be treated as part of



the business income. As we have noted above that assessee's submission, specifically citing Mihir Kangad's statement, suggests that what appeared as "unsecured loans" in the seized data were, in substance, "introduction of income generated from unaccounted trading activities". If this is the case, then the entire amount of such funds, irrespective of their nomenclature in the seized data, represents unaccounted business receipts income. Therefore, considering these facts the total net amount of loan found credited in the seized data is to be treated as net income earned from business activities (it cannot be treated as unexplained income u/s. 69A) and accordingly, year-wise income is worked out after considering the accumulated surplus available, and after set-off the loan, as follows:

F.Y	Gross receipts as per seized data	Unaccounted profit estimated @ 10%	Net business income grouped as loan in seized data	Net business Income set- off from current year's, estimated profit	Net business income set- off from earlier year's accumulated surplus profit	Balance amount of net business Income After setting off estimated profit of current year and earlier years	Total addition of net business income to be taxed as normal tax rate
2011-12	Quashed	-	-	-	-	-	-
2012-13	Quashed	-	-	-	-	-	-
2013-14	Quashed	-	-	-	-	-	-
2014-15	16,00,96,192	1,60,09,620	-	-			1,60,09,620
2015-16	17,15,48,774	1,71,54,878	4,92,54,922	1,71,54,878	1,60,09,620	1,60,90,424	3,32,45,302
2016-17	7,71,39,824	77,13,983	7,89,62,924	77,13,983		7,12,48,941	7,89,62,924
2017-18	68,12,514	6,81,252	-				6,81,252
2018-19	30,19,760	3,01,976	-				3,01,976
2019-20	48,91,67,675	4,89,16,768	-				4,89,16,768
2020-21	7,72,02,570	77,20,257	-				77,20,257
<b>Total</b>	<b>98,49,87,309</b>	<b>9,84,98,734</b>	<b>12,82,17,846</b>	<b>2,48,68,861</b>	<b>1,60,09,620</b>	<b>8,73,39,365</b>	<b>18,58,38,099</b>

61. Therefore, we direct the assessing officer to make the addition in the respective assessment Years, as per the table above. Hence, assessee's



summarised and concise grounds are partly allowed whereas all Revenue's appeals are dismissed.

62. Now we shall take, Revenue's appeal in IT(SS) No.15/RJT/2023 for A.Y. 2019-20, wherein, the summarised and concise grounds raised by the Revenue is as follows:

*“Ground No.5. In Revenue's appeal in IT(SS) No.15/RJT/2023 for A.Y. 2019-20,(with reference to Shri Hetab Shamjibhai Kangad) reads as follows:*

*“On the facts and on the circumstances of the case and in law, learned Commissioner(Appeals) has erred in holding that the investment of Rs.1,24,90,000/- has already concluded in the case of Shri Shamjibhai S. kangad, father of the assessee, without appreciating the fact that the addition in the case of father was made out of seized data for the period from 01.04.2010 to 31.03.2017, but the addition in the case of the assessee, was made for assessment year 2019-20, relevant for financial year 2018-19.*

(This issue covers ground Nos.1 to 4 in IT(SS) No.15/RJT/2023 for A.Y. 2019-20)

63. We have heard both the parties. The facts relating to the group have already been narrated by us in above paras of this order, therefore, we do not narrate them for the sake of brevity. The Learned DR for the revenue submitted that Learned CIT appeal has not appreciated the facts of the assessee's case in a right perspective as the investment of Rs.1,24,90,000/- has already concluded in the case of Shri Shamjibhai S. kangad, father of the assessee. However, without appreciating this fact that the addition in the case of father was made out of seized data for the period from 01.04.2010 to 31.03.2017, but the addition in the case of the assessee, was made for assessment year 2019-20, relevant for financial year 2018-19, therefore, in the light of the above facts, the learned DR for the revenue, contended that original addition made by the assessing officer in the hands of the assessee, should be sustained. On the other hand, learned Counsel for the assessee defended, the order passed by the Id.CIT(A).



64. We have heard both the parties. We note that on perusal of the assessment order, it was observed by Id.CIT(A) that during the course of search at the premises of Vijay Nagda, cashier of Neelkanth Group, various noting in the seized material Annexure A/12 was found and seized. As per the assessing officer, noting in these seized documents contains account of project "Shree Courtyard Co-Operative Housing Society and the same also contains amount of cash component introduced as capital by various persons including the assessee. The assessing officer reproduced page no. 132 of seized annexure at page No 4 of the assessment order, as per which, figure of Rs.1,24,90,000/- is mentioned against the name "Shamjibhai". The assessing officer stated that the said investment of Rs. 1,24,90,000/- is made by the assessee out of his unaccounted cash and consequently, addition is made u/s. 69 of the Act. The assessee contended before learned CIT(A) that he and various other persons are members of a Co-Operative Housing Society ("CHS") namely Courtyard Co-Operative Housing Society Ltd., which had developed the tenements by purchasing the lease hold rights in the land bearing plot No. 32 at Sector-1, Gandhidham. The society has carried out construction on land and tenements later on transferred / sold to various persons including members. In the course of construction activities funds were required which were made available by the members/their family. The assessee contended that investment of Rs. 1,24,90,000/- reflected in the seized document is also found recorded in the tally data 'FOR CA STUDENT FROM 1.4.2010-31.3.2017' and addition on account of unaccounted income on the basis of said tally data has already been made in the hands of assessee's father Shri Shamjibhai S. Kangad. On this ground, the assessee submitted that as the entries in the seized tally data are classified as application of the unaccounted income of Shamjibhai Kangad, further addition made in the hands of the assessee is duplication of same income.



65. The Id.CIT(A) based on the above facts noticed that entry on the loose paper seized containing figure of Rs.1,24,90,000/- reflects the name of "Shamjibhai" and not of the assessee. It was also observed by Id.CIT(A) that the assessee is son of Shri Shamjibhai Kangad and therefore, investment of Rs. 1,24,90,000/- made by Shri Shamjibhai Kangad cannot be ruled out. Moreover, on verification of the assessment order passed in the case of Shri Shamjibhai Kangad, it is seen that the assessing officer had on the basis of entries in seized data had re-casted the income, expenses, investment etc., wherein, aforesaid amount of Rs.1,24,90,000/- in Courtyard Society (Plot No. 32) is considered as application/ investment out of undisclosed business income. Therefore, once the undisclosed income in the hands of Shri Shamjibhai Kangad has already been considered by the assessing officer, which takes care of the above investment of Rs.1,24,90,000/-, addition made in the hands of the assessee was deleted by Id.CIT(A). We have gone through the above findings of the learned CIT (A) and noticed that conclusion reached by the learned CIT(A) is correct. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A). Hence we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

66. In the result, appeal filed by the Revenue, in IT(SS) No.15/RJT/2023, is dismissed.

67. In the combined result, assessee`s appeals (on legal issue raised by the assessee), in assessment years 2012–13, 2013–14, 2014–15 are allowed, whereas other appeals filed by the assessee are partly allowed to the extent indicated above in para No. 60 and 61 of this order and IT(SS)A No.11/Rjt/2022 is dismissed as withdrawn. All revenue`s appeals, (pertaining to Shri Shamjibhai S.kangad) are dismissed, and the appeal filed by the Revenue, in IT(SS) No.15/RJT/2023, (*Shri Hetab Shamjibhai Kangad*) is also dismissed.



**Order is pronounced in the open court on 31/07/2025**

Sd/-

**(DINESH MOHAN SINHA)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 31/07/2025

*DKP Outsourcing Sr.P.S*

Sd/-

**(DR.ARJUNLAL SAINI)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/ 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 अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार

आयकर अपीलीय अधिकरण ,राजकोट